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THE OFFICIAL JOURNAL OF THE DISTRICT OF COLUMBIA BAR

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Mental Health Cases Fuel Rights vs. Safety Debate

By Thai Phi Le

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from the president

By Darrell G. Mottley

The Bar's Resources: Yours for the Asking

Patrice Gilbert

In this time of financial headwinds and national issues affecting the legal profession, the D.C. Bar needs to look for ways to help our members in their practices. In recent years, national debates have centered on law schools producing too many graduates and the ensuing economic problems created by oversaturation in the field.[1] Discussions also have ranged from the alleged failure of many law schools to respond to the decline in demand for lawyers to the high cost of schooling and the overwhelming debt many graduates accrue.

In rethinking the practice and the future of the profession, there are many views of where we want to go. For instance, at the 2011 American Bar Association (ABA) Annual Meeting, the ABA House of Delegates approved a policy resolution encouraging law schools to create programs for providing practice-ready lawyers. Under the new plan, students would receive more practical legal training. Many District of Columbia law schools already provide practical training for graduates through clinical work, trial advocacy programs, and legal writing skills courses. Additionally, there have been several innovative proposals, including one where a law school would start a not-for-profit law firm and hire select graduates as new associates. This firm would provide a practical training ground, while offering reduced or free legal services to a community in need of affordable civil legal services.

In working with both recent law school graduates and experienced lawyers in transition, the Bar plays a significant role in the regulation system. In this function, Bar leadership has been working to respond to economic challenges in several ways. For example, the Bar recently expanded its online career services area in an effort to help lawyers navigate through hard times as they face a tough job market.[2] Members also can upload résumés and search for open positions using the career center's job board. We hope these resources will provide another benefit to members seeking positions in a tough economic environment.

Having lawyers who are practice ready is a vital way to ensure that Bar members are working up to their professional potential. It also ensures that the surrounding communities can benefit from lawyers' efforts as civil legal services providers. The Bar supports these endeavors in several ways:

1. "Basic Training." I view each Bar member as an important resource for society, someone who can offer much needed legal services as well as contribute to the economic fabric of the community. An example of this is the D.C. Bar Practice Management Advisory Service (PMAS), which produces a "Basic Training" program, taught by PMAS assistant director Dan Mills. The statistics and response to this program, which caters to members in small firms and solo practices, have been impressive. From its inception in November 2008 through the end of 2011, the program has trained more than 1,100 lawyers in how to start and manage a law practice in the District of Columbia. The importance of this program is that these lawyers develop critical tools to contribute to the legal landscape. To underscore the Bar's support for this program, the D.C. Bar Board of Governors has committed to expanding services to reach more members of the Bar in the coming years.

2. Continuing Legal Education. The D.C. Bar's Continuing Legal Education (CLE) Program demonstrates its efforts to improve a member's legal practice through training programs centering on substantive legal areas and ethics lessons. The CLE Program presents more than 120 programs annually to more than 5,000 attorneys. CLE Program director Lalla Shishkevish, along with a dedicated team of Bar members and Bar staff, work tirelessly with the CLE Committee to produce innovative programs. Many of these programs are taught by Bar members who are some of the leading experts in their area of practice. In keeping with one of the goals of the Bar's strategic plan, the CLE Program is working toward expanding its reach through online audio programs and other technological endeavors. I encourage you to check out the schedule of programs to find a course that will enhance your practice area.[3]

3. Sections. The D.C. Bar Sections Office provides another resource for members to enhance their practices. From a personal perspective, I found volunteering with the sections to be very rewarding. Sections volunteers work closely with Sections director Candace Smith-Tucker and her team to develop a wide array of programming. As a whole, the sections average 260 events a year, keeping Bar members informed of the latest in legal issues and developments. Of note, several of the sections work with Listservs, which provide a virtual lawyer community for sharing and exchanging ideas. I view this feature as particularly beneficial for small firm or solo practices because many topics deal with substantive practices issues and resources not always readily available in a smaller setting.

4. Legal Ethics. The Bar's Legal Ethics Committee and legal ethics counsel provide additional resources for members to remain in practice. The committee issues five to eight opinions a year pertaining to the D.C. Rules of Professional Conduct. Legal Ethics counsel Hope C. Todd and Saul Jay Singer respond to more than 2,000 calls and e-mail inquiries from Bar members each year—and these inquiries are *always* confidential.

These resources and services of the Bar are here to assist you, the members, in your practices. These tools can empower you to achieve excellence, no matter which area of law you practice.

Reach Darrell Mottley at dmottley@dcbar.org.

Notes

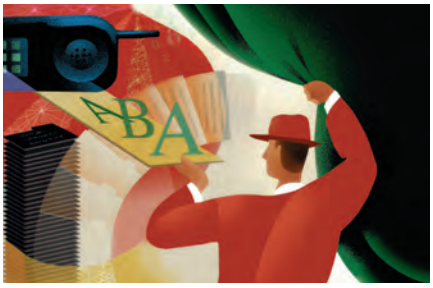
1 David Segal, *What They Don't Teach Law Students: Lawyering,* N.Y. Times, Nov. 19, 2011, available at www.nytimes.com.

2 D.C. Bar online career services area, available at http://www.dcbar.org/for_lawyers/resources/career_services/career_assistance.cfm.

3 Continuing Legal Education Program courses can be found in the D.C. Bar events calendar, located at www.dcbar.org/for_lawyers/events.

bar happenings

By Kathryn Alfisi



Mick Wiggins

Essential Trial Skills Series Among February CLE Offerings

In February the D.C. Bar Continuing Legal Education (CLE) Program will provide litigators with more than one opportunity to improve their skills and expand their knowledge.

The CLE Program's "Essential Trial Skills" series is a great introduction to and overview of the trial skills a lawyer must possess in the courtroom.

Courtesy of Baker Botts L.L.P.

Sara E. Kropf

The course will examine everything from jury selection and opening statements to witness preparation, direct examination, cross-examination, and closing arguments. Civil and criminal trial considerations also will be discussed.

The series opens on February 2 with "Jury Selection," where faculty will examine the process and procedures of jury selection, including learning the composition of the jury pool, peremptory strikes, and using jury selection services.

Paulette Chapman of Koonz, McKenney, Johnson, DePaolis & Lightfoot, L.L.P.; Janet Mitchell of the Public Defender Service for the District of Columbia; and Dwight Murray of Jordan Coyne & Savits, L.L.P. will lead this session.

Part two, "Opening Statements and Closing Arguments," on February 9 will look at opening and closing arguments from several key perspectives, including preparation, presentation, and objections, as well as the legal and ethical considerations.

Debra S. Katz of Katz, Marshall & Banks, LLP and Michael F. Williams of Kirkland & Ellis LLP will serve as faculty.

Part three, "Witness Preparation and Direct Examination," on February 16 will cover the vital task of preparing witnesses to testify credibly at trial. It will examine techniques and strategies for effective direct examination, maximizing a witness' potential and minimizing his or her weaknesses.

Faculty members Catherine Bertram of Regan Zambri & Long, PLLC and Sara E. Kropf of Baker Botts L.L.P. will discuss legal ethics issues in the context of witness preparation and direct examination.

The final part of the series, "Cross-Examination," takes place on February 23, where participants will learn how to use cross-examination to tell their story, to control the witness, and to impeach the witness.

This session is useful for attorneys who have yet to cross-examine a witness as well as for practitioners who have a modest level of trial experience. It will delve into the objectives, strategies, tactics, mechanics, and legal principles governing effective cross-examination, and will also look at the ethical concerns involved.

Patrick J. Attridge of King & Attridge and Barry Boss of Cozen O'Connor will serve as faculty.

The series is cosponsored by the D.C. Bar Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Family Law Section; Government Contracts and Litigation; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; Real Estate, Housing and Land Use Section; and Tort Law Section.

All sessions will take place from 6 to 9:15 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor.

On February 28 litigators can hone their negotiating skills by attending "How to Get What You Want: A Litigator's Guide to Negotiations."

The course will cover important topics such as how, why, and when to achieve a negotiated settlement of litigation; what motivates people to settle; how to use different negotiation styles to settle litigation; how to negotiate successfully with difficult parties; how to use the relationship between negotiation and litigation to enhance your position; understanding win–win negotiation and its limits in litigation; opening offers—when, how, and how much; when to use mediation; ethical issues in negotiation; and the traits of good negotiators.

Stephen Altman of Stephen D. Altman, PLLC, and Peter R. Steenland, of counsel at Sidley Austin LLP, will serve as faculty.

The course is cosponsored by the D.C. Bar Criminal Law and Individual Rights Section; Environment, Energy and Natural Resources Section; Family Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; and Real Estate, Housing and Land Use Section.

The course takes place from 5:30 to 8:45 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor.

For more information, contact the CLE Program at 202-626-3488 or visit www.dcbar.org/cle.

Course Focuses on Administrative Practice and Antitrust Developments

Attorneys who have an administrative practice that is affected by antirust developments will benefit from the D.C. Bar Continuing Legal Education (CLE) Program's February 13 course "A Plain English Guide to the Revised FTC/DOJ Horizontal Merger Guidelines."

The revised Federal Trade Commission and U.S. Department of Justice Horizontal Merger Guidelines (Revised

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Guidelines), issued in August 2010, will impact any attorney who advises clients on major acquisitions or competition-related regulatory matters. This course will explain what has changed and how the Revised Guidelines will impact merger proceedings before relevant federal agencies.

Attendees will learn how the Revised Guidelines may affect competition analysis in areas such as entry market definition and unilateral effects analysis in merger and even nonmerger proceedings. Faculty expert Elizabeth McIntyre of the Federal Communications Commission will update participants on developments in acquisitions of partial interests and mergers of competing buyers.

The course takes place from 6 to 9:15 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. It is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Antitrust and Consumer Law Section; Arts, Entertainment, Media and Sports Law Section; Computer and Telecommunications Law Section; Corporation, Finance and Securities Law Section; Environment, Energy and Natural Resources Section; Government Contracts and Litigation Section; and Litigation Section.

For more information, contact the CLE Office at 202-626-3488 or visit www.dcbar.org/cle.

D.C. Courts Celebrate Black History Month

The District of Columbia Courts will mark Black History Month in February with an event each Friday.

The annual observance will feature entertaining and enlightening events that celebrate black heritage. Recent celebrations featured a traditional step show, a Buffalo Soldiers reenactment and a presentation by the African American Civil War Memorial and Museum, a speech on black inventors, and a performance depicting the life of Frederick Douglass.

For more information, contact Tom Feeney at 202-879-1700.

International Law Section Tackles BRICS Agenda

Starting in February, the D.C. Bar International Law Section will host a series of discussions centered on BRICS, an international political organization made up of Brazil, Russia, India, China, and South Africa. A self-described organization of "the leading emerging economies," BRICS represents one-third of the world's population and holds more than $4 trillion in international reserves.

The series will continue until the fourth BRICS summit takes place in New Delhi in the spring. The discussions will cover a broad range of issues related to the BRICS agenda.

The series is cosponsored by the section's Committees on Inter-American Legal Affairs, International Dispute Resolution, International Intellectual Property, International Trade, Investment and Finance, Immigration and Human Rights, and Public International and Criminal Law.

Programs and dates will be announced on the section's Web site at www.dcbar.org/for_lawyers/sections/international_law.

Georgetown Law Holds International Trade Update

Private practitioners, government attorneys, and in-house counsel who want to learn practical and timely information on international trade should attend Georgetown Law CLE's 2012 International Trade Update from February 9 to 10.

The program will inform participants of important new developments affecting the trade and customs bars, as well as provide critical interpretation of those developments by senior partners, top government officials, judges, and corporate counsel.

Speakers include Kathleen W. Cannon and Paul C. Rosenthal, partners at Kelley Drye & Warren LLP; Jean Anderson, senior partner at Weil, Gotshal & Manges LLP; Timothy C. Brightbill, partner at Wiley Rein LLP; Bruce Wilson, senior counsel at King & Spalding; and Valerie A. Slater, partner at Akin Gump Strauss Hauer & Feld LLP.

The program takes place from 8 a.m. to 5:30 p.m. on day one and from 8 a.m. to 4:30 p.m. on day two at Georgetown University Law Center's Hart Auditorium, 600 New Jersey Avenue NW.

To RSVP or for more information, visit www.law.georgetown.edu/cle.

WCL Discusses Pro Bono Challenges, Rewards for Government Attorneys

On February 28 the Washington Council of Lawyers (WCL) will hold a brown bag event from 12 to 1 p.m. where government attorneys can learn about the challenges and rewards of doing pro bono work.

Laura Klein, pro bono program manager at the U.S. Department of Justice, and two former WCL Outstanding Government Pro Bono Attorney award recipients, Sean Keveney of the Justice Department's Civil Rights Division and James Yoon of the Criminal Division, will speak at the event.

To RSVP or for more information, visit www.washingtoncounciloflawyers.org or contact WCL executive director Nancy Lopez at 202-942-5063 or nalopez@wclawyers.org.

D.C. Bar Welcomes Williamson at 2012 Celebration of Leadership

Thomas S. Williamson Jr., senior counsel at Covington & Burling LLP, will be sworn as the D.C. Bar's 41st president on June 19 during the 2012 Celebration of Leadership: The D.C. Bar Awards Dinner and Annual Meeting at the historic Mayflower Renaissance Hotel, 1127 Connecticut Avenue NW.

The celebration also features the D.C. Bar Pro Bono Program's Presidents' Reception honoring Williamson. The reception will benefit the Pro Bono Program, which is supported entirely by voluntary contributions.

Highlights of the Awards Dinner and Annual Meeting include the announcement of the 2012 D.C. Bar election results; the presentation of awards to D.C. Bar sections, pro bono attorneys, law firms, and others who have served the Bar and its community; and Williamson's swearing-in ceremony.

Courtesy of Covington & Burling LLP

Thomas S. Williamson Jr.

The dinner also will include the presentation of the 2012 Thurgood Marshall Award to a Bar member who has demonstrated exceptional achievement in the pursuit of equal justice and equal opportunity for all Americans.

For more information on the Presidents' Reception or to make a donation to the D.C. Bar Pro Bono Program, contact Angela Boone at 202-942-9759 or aboone@dcbar.org. For more information on the Celebration of Leadership, contact Verniesa R. Allen at 202-737-4700, ext. 3239, or vallen@dcbar.org.

Women's Bar Presents Panel Discussion, Fundraiser

The Women's Bar Association (WBA) of the District of Columbia will offer an educational program and a fundraiser in February.

On February 9 and 12 the WBA's Diversity Forum and the Environmental Law Forum and the Howard Women Law Students Association will host "Changing Realities for Women in the

Law: Strategies for Navigating the Post-Recession Legal Field."

The program will provide attendees with practical information about navigating the latest challenges and persistent obstacles. Topics to be discussed include finding and financing a job in public interest law, overlooked opportunities in government and public policy, post-recession hiring and workplace changes in law departments and law firms, and persistent and emerging challenges to the advancement and retention of women and women of color.

Panelists for this forum include Christine Greene, director of legal programs at Neighborhood Legal Services Program; Nicole Austin-Hillery, director and counsel for The Brennan Center for Justice Washington, D.C., office; WBA President Monica Parham, of counsel at Crowell & Moring LLP; Ama Romaine, senior vice president and assistant general counsel at Hilton Worldwide; Imoni Washington, director of programs at the D.C. Bar Foundation; and WBA immediate past president Holly Loiseau, a partner at Weil, Gotshal & Manges LLP.

The 90-minute panel discussions and receptions take place from 5:30 to 7 at Howard University School of Law, Pauline Murray Conference Room, 2900 Van Ness Street NW.

On February 23 the WBA Association Foundation will hold its ninth annual wine-tasting and silent auction to benefit the Foundation Founders Fellowship that will be awarded to The Catholic University of America Columbus School of Law.

Established in 2006, the fellowship provides a stipend to an area law student to work with a local legal services provider on projects benefitting women and children in our community.

The event will feature an array of wines and auctions items such as jewelry, vacation getaways, and sports and theater tickets, as well as door prizes. It takes place from 6:30 to 8:30 p.m. at Hogan Lovells, 555 13th Street NW.

For more information or to register, visit www.wbadc.org.

Practical Ethics Offerings From CLE Program

The D.C. Bar Continuing Legal Education (CLE) Program will hold two ethics courses in February.

The February 13 course "Conflicts of Interest: Advanced Topics and Considerations" will provide the practicing attorney with an understanding of advanced conflict-of-interest issues under the D.C. Rules of Professional Conduct.

Thomas B. Mason, a partner at Zuckerman Spaeder LLP, will explore topics such as a lawyer's duty of loyalty, representing both sides in a business transaction, being adverse to one's own client in an unrelated matter, conflict-of-interest considerations involving former clients, and conflict issues after changing law firms. The course also will address the consequences of a conflict of interest, including disqualification, professional discipline, and malpractice liability, as well as law firm procedures to avoid conflicts.

The course takes place from 6 to 8:15 p.m. and is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Computer and Telecommunications Law Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Environment, Energy and Natural Resources Section; Family Law Section; Government Contracts and Litigation Section; Health Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; and Real Estate, Housing and Land Use Section.

The February 27 course "Fee Agreements in the District of Columbia: Ethics and Practice Guide" will provide practical

advice about developing fee agreements in the District and the ethical issues involved.

Using sample agreements, faculty will talk about the requirements of a written agreement, including the scope of the agreement; fee structure (hourly, fixed, contingency, and others); and handling of expenses. Attendees will learn how to deal with client files and property in their fee agreements, how to address fees to be charged for the services of associates and legal staff, and other important issues such as termination and withdrawal and fee dispute arbitration.

Joel P. Bennett of the Law Offices of Joel P. Bennett, P.C. and Daniel M. Mills, assistant director of the D.C. Bar Practice Management Advisory Service, will serve as faculty.

The course takes place from 6 to 9:15 p.m. and is cosponsored by all D.C. Bar sections.

Both courses will be held at the D.C. Bar Conference Center, 1101 K Street NW, first floor.

For more information, contact the CLE Office at 202-626-3488 or visit www.dcbar.org/cle.

UDC-DCSL Brings Back Public Interest Job Fair

As part of its effort to fund law students who work full-time at public interest law jobs during the summer, the University of the District of Columbia David A. Clarke School of Law (UDC-DCSL) will hold its Summer Public Interest Job Fair on February 8.

Representatives for nonprofit public interest groups, government agencies, or the judiciary who would like a UDC-DCSL student to work for their organizations this summer are welcome to attend.

To RSVP, e-mail UDC-DCSL director of career services Dena Bauman at dbauman@udc.edu. Include the name of the organization and the person attending, street/mailing address, phone and fax numbers, and the organization's e-mail and Web site address. A written internship description should also be attached.

The job fair takes place from 4:30 to 6 p.m. at UDC-DCSL, 4340 Connecticut Avenue NW, room 214.

To post employment opportunities for UDC-DCSL students and graduates, go to www.law.udc.edu/networking/submit.asp.

Howard University Law Holds Jazz Benefit

On February 11 Howard University School of Law will hold a jazz concert to benefit the Howard Family Law Certificate Program.

The concert will feature performances by the Dick Morgan Quartet, Antonio Parker, and Carl McIntyre, as well as by law school administrators, faculty, staff, and students. There will be a VIP champagne and chocolate reception and significant giveaways just in time for Valentine's Day.

The concert takes place from 7:30 to 9:30 p.m. at the University of the District of Columbia Auditorium, 4200 Connecticut Avenue NW, building 46.

To purchase tickets, be a sponsor, or to place an advertisement, contact professor Cynthia Mabry at 202-806-8067 or cmabry@law.howard.edu, or visit www.law.howard.edu.

Course Explores Privacy Issues in the Workplace

Issues of privacy in the workplace have become increasingly subject to litigation, regulation, international agreements, and even new legislation as technology makes it easier for employers to obtain knowledge about their employees. Attorneys who work with business clients or who represent employees need to be aware of this evolving area of the law.

On February 29 the D.C. Bar Continuing Legal Education (CLE) Program will offer the course "Privacy in the Workplace: Where It Is and Where It Isn't" to help attorneys better understand the laws that affect workplace privacy.

Attendees will learn how to deal with issues such as employee monitoring, searching the electronic and physical workplace, employee privacy rights, investigation of applicants and employees, international data flows, and potential liability for improper release of personnel information. Diane A. Seltzer of The Seltzer Law Firm and Gerard M. Stegmaier of Wilson Sonsini Goodrich & Rosati will serve as faculty.

The course takes place from 4 to 7:15 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. It is cosponsored by the D.C. Bar Computer and Telecommunications Law Section; Corporation, Finance and Securities Law Section; Criminal Law and Individual Rights Section; Health Law Section; Intellectual Property Law Section; Labor and Employment Law Section; Law Practice Management Section; and Litigation Section.

For more information, contact the CLE Program at 202-626-3488 or visit www.dcbar.org/cle.

Pro Bono Program Offers Training on How to Represent Asylum Seekers

On February 3 the D.C. Bar Pro Bono Program will train attorneys interested in representing asylum seekers.

The training session will prepare pro bono attorneys to represent indigent clients in asylum cases at the affirmative stage as well as detained individuals. Among the topics to be covered are U.S. asylum law, preparing the I-589 application form, documenting asylum cases, representing survivors of trauma and torture, and barriers to asylum.

Faculty will include experienced practitioners, a U.S. Citizenship and Immigration Services asylum officer, and law professors. This training is appropriate for attorneys, paralegals, and law students. Participating attorneys must be admitted to practice in some U.S. jurisdiction and have their own malpractice insurance.

The training takes place from 9 a.m. to 3 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. For more information, contact the Pro Bono Program at 202-626-3489.

Section Luncheon Examines District's Budget Outlook

While the worldwide economy remains in flux, how would this impact the District of Columbia's budget developments for the coming year? On February 17 the D.C. Bar District of Columbia Affairs Section will explore this question in the luncheon program "The District's FY 2013 Budget: How Will the District Address Spending Pressures?"

The program will address questions such as what are the forecasters saying; what spending pressures is the city expecting; what is the impact on its reserves and bond ratings; how will the mayor, chief financial officer, and city council work together to address revenue forecasts and any budget gaps; what options are available; and what does it mean for agency budgets and government programs.

Speakers include Jennifer Budoff, budget director for the Council of the District of Columbia; D.C. chief financial officer Natwar Gandhi; and Eric Goulet, director of the mayor's Office of Budget and Finance.

The luncheon takes place from 12:30 to 2 p.m. at Wiley Rein LLP, 1750 K Street NW. For more information, contact the D.C. Bar Sections Office 202-626-3463.

Reach D.C. Bar staff writer Kathryn Alfisi at kalfisi@dcbar.org.

bar counsel

By Gene Shipp

Musings From Bar Counsel

Mick Wiggins

Recently, an attorney told me that when she receives *Washington Lawyer* magazine, she turns first to the "Bar Counsel" column to get ethical advice. I found this surprising, as the Office of Bar Counsel doesn't give "ethical advice." The D.C. Bar Legal Ethics Committee has that function. Others have told me they skip directly to the disciplinary lists that follow the column to see what happened to whom, and then they flip to Jake's offering in the back of the magazine to actually read a *real* column.

These incidents started me thinking about the purpose of our bi-monthly contribution to the magazine. We have been writing this sometimes informational, sometimes educational, sometimes cautionary, and sometimes general thoughts column for longer than the 31 years I have been on the job. We often sit around and ask ourselves: What is left to write? Occasionally, new rules or new cases make our decision very easy. More often, we wrestle with how to say, yet again, "Don't lie, cheat, or steal" and "Don't neglect your clients or their cases."

Here are some random thoughts on what we are trying to achieve with each column:

1. *Lawyers' Ethical Obligations and the Disciplinary System.* These columns are the most straightforward. They address an attorney's obligations under the District of Columbia Rules of Professional Conduct (the rules), *see, e.g.*, "What Should You Do With Disputed Entrusted Funds?" (Wash. Law. Dec. 2010), and the functioning of the disciplinary system, *see, e.g.,* "An Abbreviated Process" (Apr. 2011).

2. *Best Practices.* These columns go beyond the rules and describe practices that can help attorneys avoid ethical complaints. An example: general retainers must be in writing, but you should always get it signed, too, even when the rule does not require it. *See, e.g.*, "These Standards Are Voluntary—and Valid" (Jul./Aug. 2010).

3. *Warnings to the Bar.* These columns warn that the rules have changed or the court has spoken to a particular issue, such as the recent *Mance* case, which warned the Bar against the use of nonrefundable retainers. *See* "You Can't Get Around *Mance*" (Jul./Aug. 2011). These columns also warn of outside trends that may affect an attorney's practice, such as phony clients defrauding unsuspecting attorneys. *See* "If It Sounds Too Good to Be True . . ." (Oct. 2010).

4. *General Thoughts.* These columns reflect on some idea or observation upon which Bar Counsel feels the need to pontificate, such as this column.

We are all human beings immersed in the human condition. I know that no one wakes up on a given day, looks in the mirror, and says, "I feel a 1.6 violation coming on." Whether we realize it or not, our day-in and day-out ethical decisions are affected by the client we represent, the type of law we practice, the judge before whom we appear, or even our boss. While 41 percent of our investigated complaints involve solo practitioners, 59 percent do not. They involve firms, government lawyers, public interest lawyers, and those in general counsel offices. While it is hard to write to such a diverse audience, we know that the human condition is what drives poor judgment, white lies, or cute and clever responses that cut an ethical edge—all of which can affect your reputation and your license.

So when Bar Counsel says in a hundred different ways, "Don't lie, cheat, or steal," and "Don't neglect your clients or their cases," we are coming back to the same two thoughts we could write every month:

- Apply the Golden Rule to all with whom you deal.
- Do unto others as you would have them do unto you.

Now, wouldn't that make your mother proud?

Gene Shipp serves as Bar Counsel for the District of Columbia.

Disciplinary Actions Taken by the Board on Professional Responsibility Hearing Committees on Negotiated Discipline

IN RE BARRY NAKELL. Bar No. 198382. November 28, 2011. The Board on Professional Responsibility's Ad Hoc Hearing Committee recommends that the D.C. Court of Appeals accept Nakell's petition for negotiated discipline for two consolidated matters and suspend him for six months, with the entire sanction stayed in favor of a three-year probation on the condition that Nakell not be found guilty of a violation of any federal or state criminal law or found to have violated any Rules of Professional Conduct. Nakell violated Rules 8.4(b) and 8.4(c).

Disciplinary Actions Taken by the Board on Professional Responsibility

Original Matters

IN RE DONNA M. PETERKIN. Bar No. 473333. November 7, 2011. The Board on Professional Responsibility ordered that the Specification of Charges in the disciplinary proceeding regarding Peterkin be dismissed.

IN RE KEVIN M. SABO. Bar No. 435676. November 9, 2011. The Board on Professional Responsibility recommends that the D.C. Court of Appeals deny Sabo's Petition for Reinstatement.

Disciplinary Actions Taken by the District of Columbia Court of Appeals

Original Matters

IN RE WILFREDO PESANTE. Bar No. 457512. November 3, 2011. The D.C. Court of Appeals disbarred Pesante by consent, effective immediately.

IN RE VAHID SHARIATI. Bar No.

468925. November 10, 2011. The D.C. Court of Appeals disbarred Shariati and, as a condition of reinstatement, required Shariati to make restitution of fees paid to him, with interest at the legal rate, to his former clients or the Client Security Trust Fund. Shariati committed numerous ethical violations over several years in 11 immigration client matters. Specifically, Shariati failed to provide competent representation to his clients and failed to serve his clients with the requisite skill and care; engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation; failed to represent his clients zealously and diligently within the bounds of the law; neglected his clients and failed to act with reasonable promptness; failed to keep his clients reasonably informed about the status of their matters; engaged in conduct that seriously interfered with the administration of justice; failed to surrender papers and property to which his clients were entitled and failed to return unearned fees; engaged in the unauthorized practice of law; failed to communicate in writing the basis or rate of his fee; and destroyed evidence that he knew or reasonably should have known was the subject of a Bar Counsel subpoena in a pending investigation and falsified evidence submitted to the U.S. Immigration and Naturalization Service. Rules 1.1(a) and 1.1(b) in all counts except count V; 1.3(a), 1.3(b), 1.3(c), 1.4(a), and 1.4(b) in counts II, III, IV, V, and VI; 1.16(d) in all counts except count V; 1.5(b) and 5.5(a) in counts IV, VI, and VIII; 3.4(a) in counts VIII, IX, X, and XI; 3.4(b) in counts III and VII; and 8.4(d) in counts II, III, IV, V, VI, VIII, IX, and X.

Interim Suspensions Issued by the District of Columbia Court of Appeals

IN RE MICHAEL R. CARITHERS JR. Bar No. 434113. November 17, 2011. Carithers was suspended on an interim basis based upon discipline imposed in Maryland.

IN RE JAGJOT S. KHANDPUR. Bar No. 438111. November 22, 2011. Khandpur was suspended on an interim basis based upon discipline imposed in Maryland.

IN RE JOHN E. KOLOFOLIAS. Bar No. 97113. November 22, 2011. Kolofolias was suspended on an interim basis based upon discipline imposed in Massachusetts.

IN RE LILY MAZAHERY. Bar No. 480044. November 16, 2011. Mazahery was suspended on an interim basis pursuant to D.C. Bar R. XI, § 13(e), claim of disability by attorney.

IN RE EGAN P. O'BRIEN. Bar No. 472249. November 3, 2011. O'Brien was suspended on an interim basis based upon discipline imposed in Maryland.

Disciplinary Actions Taken by Other Jurisdictions

In accordance with D.C. Bar Rule XI, § 11(c), the D.C. Court of Appeals has ordered public notice of the following nonsuspensory and nonprobationary disciplinary sanctions imposed on D.C. attorneys by other jurisdictions. To obtain copies of these decisions, visit www.dcbar.org/discipline and search by individual names.

IN RE LARRY E. KLAYMAN. Bar No. 334581. On August 29, 2011, the Supreme Court of Florida reprimanded Klayman.

IN RE DOUGLAS J. MINSTER. Bar No. 418543. On November 2, 2011, the Massachusetts Board of Bar Overseers publicly reprimanded Minster.

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legal beat

By Kathryn Alfisi and Thai Phi Le

News and Notes on the D.C. Bar Legal Community

Bar Seeks Nominees for 2012 Rosenberg, Marshall Awards

The D.C. Bar is calling for nominations for its 2012 Beatrice Rosenberg Award for Excellence in Government Service and 2012 Thurgood Marshall Award. Both awards will be presented at the Celebration of Leadership: The D.C. Bar Awards Dinner and Annual Meeting on June 19.

The Rosenberg Award is presented annually to a D.C. Bar member whose career exemplifies the highest order of public service. The Bar established the award in honor of Beatrice "Bea" Rosenberg, who dedicated 35 years of her career to government service and performed with distinction at the U.S. Department of Justice and the U.S. Equal Employment Opportunity Commission. She also served as a member of the Board on Professional Responsibility.

In keeping with the exceptional accomplishments of Ms. Rosenberg, nominees should have demonstrated outstanding professional judgment throughout long-term government careers, worked intentionally to share their expertise as mentors to younger government lawyers, and devoted significant personal energies to public or community service. Nominees must be current or former employees of any local, state, or federal government agency. For more information on the Rosenberg Award criteria, visit www.dcbar.org/rosenbergaward/rosenberg_info.cfm#criteria.

The Bar established the Thurgood Marshall Award in 1993, which is presented bi-annually in alternating years. Candidates for the Thurgood Marshall Award must be members of the D.C. Bar who have demonstrated exceptional achievement in the pursuit of equal justice and equal opportunity for all Americans.

Nominations for both the 2012 Rosenberg and Marshall awards should be submitted to Katherine A. Mazzaferri, Chief Executive Officer, District of Columbia Bar, 1101 K Street NW, Suite 200, Washington, DC 20005-4210. The last day for submissions is February 10.

For more information about the Marshall Award, e-mail marshallaward@dcbar.org; for information on the Rosenberg Award, e-mail rosenbergaward@dcbar.org. Information for both awards can be found at www.dcbar.org/awards.

To learn more about the Bar's 2012 Celebration of Leadership, which will be held at the Mayflower Renaissance Hotel, 1127 Connecticut Avenue NW, visit www.dcbar.org/annual_dinner.—*K.A.*

That's a Wrap

Courtesy of the Children's Law Center

On December 15 the Children's Law Center held a gift wrapping party as part of its annual Holiday Help Drive, which provides Christmas gifts for disadvantaged children and families in the District of Columbia. (See page 18 for other charity events.)—*K.A.*

Congress Cuts Nationwide Funding for Legal Services

On November 17 Congress voted to slash funding for the Legal Services Corporation (LSC) by $56 million. The organization is the single largest provider of civil legal aid for low-income Americans.

"The 18 percent reduction in basic field funding is requiring many programs to lay off lawyers and staff and is causing some programs in rural areas to close offices. This reduction comes on top of a huge decline in [Interest on Lawyers' Trust Accounts] funding nationwide and, in many places, on top of cuts in state appropriations," said James J. Sandman, president of LSC. "At the same time, the demand for legal services has increased dramatically as a result of the economy, with the number of individuals living in poverty now at an all-time high."

For some states, the LSC-funded program might be the only program it has to provide access to justice for its poorer population, helping them navigate the legal system for urgent issues such as child custody, foreclosures, and domestic violence. In the District of Columbia, the Neighborhood Legal Services Program will be affected by the federal cuts.

To help alleviate the funding reductions and expand support for pro bono services, LSC created a nationwide Pro Bono Task Force to study how the organization can use resources from the private bar to improve service delivery in urban and rural areas. Among the top focuses will be leveraging technology to aid the underserved population, including providing information and court forms online.

"Pro bono resources are only a supplement to and not a substitute for a robust network of well-funded legal services programs," Sandman added. "We have to increase private contributions from all sources to narrow the gap between the crushing demands and the limited resources available to legal aid programs today."

LSC distributes about 95 percent of its total funding to 136 independent nonprofit legal aid programs with more than 900 offices that provide legal assistance to low-income individuals and families throughout the nation.—*T.L.*

Bar Sections Announce Steering Committee Openings

The D.C. Bar sections are seeking members interested in steering committee positions for all of the Bar's sections. Members wishing to be considered should submit a Candidate Interest Form and résumé to the Sections Office by 5 p.m. Eastern Time on Thursday, February 2. All section members have been notified by e-mail or postal mail about the availability of Candidate Interest Forms, which can be found online at www.dcbar.org/for_lawyers/sections/section_elections.

Nearly all steering committee vacancies are for three-year terms. Each section has two, three, or four available positions. A list of vacancies can be found at www.dcbar.org/for_lawyers/sections/section_elections/vacancies.cfm.

The sections' nominating committees will review all Candidate Interest Forms to find the best qualified, diverse candidates. Two to three candidates will be nominated for each position. Previous leadership experience with voluntary bar associations or with the Bar's sections is highly desirable.

The elections will take place in the spring of 2012, and the results will be announced in June. The winning candidates will assume their new steering committee roles on July 1.

For more information about the elections, visit www.dcbar.org/for_lawyers/sections/section_elections.

Georgetown Law Receives Pro Bono Award

The Georgetown University Law Center Appellate Litigation Clinic received a pro bono award from the Catholic Legal Immigration Network, Inc. in December in recognition of its "invaluable contributions made to the Board of Immigration Appeals (BIA) Pro Bono Project and to the vulnerable populations that the project serves."

"Over the past decade, the Georgetown Law Appellate Litigation Clinic has provided us with exceptional work on their cases with unparalleled dedication, energy, and skill. Their commitment is a contributing factor to how we are here today celebrating our 10th anniversary," said Lauren Sullivan, advocacy attorney for the BIA Pro Bono Project.

The pro bono award was established in 2004 and is presented annually to individuals, law firms, and law schools that provide pro bono legal representation to indigent immigrants before the BIA.

Georgetown's clinic has represented dozens of detained immigrants in the past several years and has trained numerous students and fellows who continue to volunteer with the BIA Pro Bono Project after they graduate.

The Appellate Litigation Clinic is one of Georgetown Law's 14 clinical programs. Students in the programs handle civil and criminal appeals involving issues such as civil rights, habeas corpus, and immigration. They are exposed to litigation in several different courts, including the federal circuits, the BIA, and the courts in the District of Columbia.—*K.A.*

Bar Members Must Complete Practice Course

New members of the District of Columbia Bar are reminded that they have 12 months from the date of admission to complete the required course on District of Columbia practice offered by the D.C. Bar Continuing Legal Education Program.

D.C. Bar members who have been inactive, retired, or voluntarily resigned for five years or more also are required to complete the course if they are seeking to switch or be reinstated to active member status. In addition, members who have been suspended for five years or more for nonpayment of dues or late fees are required to take the course to be reinstated.

New members who do not complete the mandatory course requirement within 12 months of admission receive a noncompliance notice and a final 60-day window in which to comply. After that date, the Bar administratively suspends individuals who have not completed the course and forwards their names to the clerks of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia, and to the Office of Bar Counsel.

Suspensions become a permanent part of members' records. To be reinstated, one must complete the course and pay a $50 fee.

The preregistration fee is $219; the onsite fee is $279. Upcoming dates for 2012 are February 7, March 10, April 10, May 12, June 5, and July 14. Advanced registration is encouraged.

For more information or to register online, visit www.dcbar.org/mandatorycourse.

Top Jewish Lawyers Receive Accolades for Accomplishments

On December 7 notable members of the legal community trekked through the pouring rain to celebrate attorney Jack H. Olender and Judge Thomas Buergenthal. Both were honored with the Pursuit of Justice Award, given out each year by the American Association of Jewish Lawyers and Jurists (AAJLJ).

"Both men have pursued justice all their lives, whether it was through teaching or in the courts," said outgoing AAJLJ president Stephen Greenwald of the honorees' tremendous accomplishments throughout their careers.

Robert L. Weinberg, a retired founding partner at Williams & Connolly LLP, presented the award to Olender, recognizing the latter's continued dedication to improving the community, fighting day in and day out for justice. Weinberg noted that Olender has worked on more than 200 cases that produced an award of more than $1 million. He focuses specifically on medical malpractice as president of Jack H. Olender and Associates, P.C. In addition, he and his wife, Lovell, founded the Olender Foundation to counter poverty and violence and to promote opportunity and equal justice. Olender has served as president of both the Bar Association of the District of Columbia and the Trial Lawyers Association of Metropolitan Washington, D.C.

In accepting the award, Olender cited the influence his parents had on his desire to ensure that those who were injured received the justice they deserve. "I accept the award in honor of my parents who came to the promised land of America and taught me to perform mitzvot [commandments]," Olender said.

Ralph Steinhardt, professor of law and international affairs at The George Washington University, introduced Buergenthal, who spoke about his time as a child of the Holocaust. Those horrific experiences drove him to pursue a lifelong career in human rights, while the memories continually strengthen his resolve to fight some of the world's injustices.

Currently, Buergenthal is judge and president of the Inter-American Court of Human Rights, playing an integral role in ending the practice of disappearances in Honduras. When not in the courts, he is in the classroom, teaching students at George Washington as professor emeritus of comparative law and jurisprudence. Buergenthal has also served as

John Whitman

Judge Thomas Buergenthal (left) and attorney Jack H. Olender were honored with the Pursuit of Justice Award, presented each year by the American Association of Jewish Lawyers and Jurists.

the American judge on the International Court of Justice and coauthored the first international human rights law textbook in the United States.

The evening ended with a performance by cantor Moshe Taube. This year, the event was held at the Women's National Democratic Club. Former recipients of the award include Justice Stephen G. Breyer, Justice Ruth Bader Ginsburg, Martin Mendelsohn, Peter J. Neufeld, Barry C. Scheck, and Robert Weinberg, among many others.—*T.L.*

Bar Welcomes New Members at Annual Reception

On December 5 the D.C. Bar Board of Governors and the D.C. Bar Membership Committee hosted a reception welcoming new attorneys who recently have joined the Bar.

Approximately 90 guests (76 of which were new members) attended the reception, where they had the opportunity to network and meet with Bar leaders, including Bar President Darrell G. Mottley.

"Welcome to the Bar family, 96,000 lawyers strong; we're about 8 percent of the total attorneys in the United States, which is a massive number," Mottley said in his welcoming remarks. "A lot of our lawyers are members of other bars, so we think of ourselves as a national bar as well as a local bar," he added.

Mottley then talked about the opportunities available for members through the Bar's Continuing Legal Education, Sections, and Pro Bono programs.

Supporters of the reception, which was held at the D.C. Bar headquarters, included AHP, Avis Car Rental, Budget, Carr Workplaces, D.C. Bar Magazine Subscriptions, Fastcase, Framing Success, GEICO, Office Depot, Samson Paper Company, The Sports Club/LA, UPS, and USI Affinity.—*K.A.*

Panel Offers Different Voices to Access to Justice Problems

On January 5 Monika Varma, executive director of the D.C. Bar Pro Bono Program, was among an eclectic mix of voices serving as panelists at the Association of American Law Schools' annual meeting. The discussion centered on ways to tackle the growing problem of access to justice for the poor.

To think that one panel could encompass most crevices of the issue would be impossible, noted moderator Susan Carle, a professor of law at American University Washington College of Law. Instead, the discussion drew four speakers with very different professional backgrounds to offer their perspectives.

First up was Amy Bach, author of *Ordinary Injustice: How America Holds Court*, which won the 2010 RFK Book Award from the Robert F. Kennedy Center for Justice and Human Rights. Bach immediately went into storytelling mode, animatedly capturing some of the book's stories of the systemic failures of the court systems to which all players—from judges to the defendants—are blind.

She spoke about a prosecutor who helped 48 people he hadn't met until that day plead guilty in a day in one of Georgia's rural courthouses. He later went on to one of the best public defender offices in the state, helping countless people and proving that with a better court system, people will change to meet the expectations of that system.

"How can we change the systemic issues?" she asked, offering a possible solution to alleviate the problem. Bach spoke about a justice index system she and a group of people in New York are working on to compare how different courts are functioning. "Monitoring and measuring is how we intervene to give citizens power so they can see the problems."

Kenneth Starr, president of Baylor University in Texas and former U.S. solicitor general, spoke about representing unpopular defendants. "Nothing in my legal work has given me as much satisfaction as representing people on death row," he said. If society were to impose the "ultimate sanction," Starr said he believes these defendants deserve an attorney who would go the extra mile to ensure legal guilt.

Offering a modern-day solution to narrowing the access to justice gap was Ron Staudt, a professor at Chicago-Kent College of Law. He suggested that every law

school should implement an "Apps 4 Justice Clinic," which would teach students how to build different Web-based applications that help deliver civil legal services to the poor. By observing and interacting with possible court clients, students can create guided interviews that help self-represented litigants navigate the legal system to find the correct forms and information they need to prepare for their cases.

Rounding out the panel was Varma, who, prior to joining the D.C. Bar Pro Bono Program, was a director of the Robert F. Kennedy Center for Justice & Human Rights. Varma explored the different faces of access to justice problems both internationally and in the District. She compared her experiences abroad in Chad and Mexico with her time in the District, stating that internationally, the problem is often building the actual justice system itself. Locally, however, the goal should be focused on increasing access to justice, whether it be creating an affinity for pro bono work as early as law school in courses not typically covering social injustices or transforming the culture in a large law firm.

"People, even in the most broken systems, have a deep faith in the legal system and put their life on the line on that faith," Varma said. She later continued, "I think we in D.C., in the U.S., have incredible resources, but with that comes incredible responsibility to keep the justice system working in this country."—*T.L.*

Guantánamo Bay Pro Bono Lawyers Garner 2011 Gribbon Award

Zuckerman Spaeder LLP partners William J. Murphy and John J. Connolly received the 2011 Daniel M. Gribbon Pro Bono Advocacy Award from the Standing Committee on Pro Bono Legal Services of the Judicial Conference of the District of Columbia Circuit. The duo was recognized at a reception held on December 6 recognizing pro bono representation of Guantánamo Bay detainees.

Murphy and Connolly represented detainee Dr. Ayman Saeed Batarfi from 2005 to 2010. The attorneys, along with their associate Daniel P. Moylan, expended 5,000 hours on protracted proceedings, including hundreds of hours to secure evidence from Pakistan and Afghanistan. Batarfi was released from Guantánamo.

The award was presented by Chief Judge Royce C. Lamberth of the United States District Court for the District of Columbia, who spoke about the Guantánamo cases brought before the court.

Kathryn Alfisi

John J. Connolly (left) and William J. Murphy (center) of Zuckerman Spaeder LLP were honored with the Daniel M. Gribbon Pro Bono Advocacy Award by the U.S. District Court for the District of Columbia for their work representing a Guantánamo Bay detainee. Chief Judge Royce C. Lamberth presented the award.

"It was June 12, 2008, I remember the day well. I had been chief judge just a little over a month when the Supreme Court decided to bless our court with all of the Guantánamo Bay detainees who were challenging their imprisonment in federal court. The Court said it was confident that we would move with all deliberate speed and would not give us any guidance because it was sure we could figure it all out," he told the audience. "When we began, we had 200 pending cases and 600 detainees. To describe this docket as overwhelming would really be an understatement. But sheer volume of cases wasn't the only reason we needed the legal community to step in to provide pro bono representation. The issues to be addressed in these cases are complicated and are of the utmost importance under the Constitution of the United States and our guarantee of due process; it's the very foundation of our judicial system, which protects us all even in time of fear and uncertainty."

In addition to Murphy and Connolly, the reception honored the work of more than 500 other lawyers who contributed pro bono representation to detainees seeking release from detention in habeas corpus proceedings. During the past several years, the U.S. District Court for the District of Columbia has presided over hundreds of these cases, becoming a sizable portion of the court's docket.

More information about the Guantánamo Bay cases is available at www.dcd.uscourts.gov/dcd/guantanamo.—*K.A.*

South Asian Bar Association Announces Election Results

The South Asian Bar Association (SABA-DC) of Washington, D.C., elected new members to its 2012 executive board.

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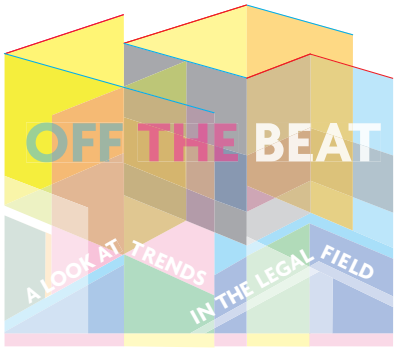


When Lawyers Take Action, Many Hands Make Light Work

On December 10 more than 10,000 volunteers walked quietly through Arlington Cemetery, perching wreaths decorated with red bows against the rows of white marble gravestones as part of Wreaths Across America Day. Coming out to help adorn the 75,000 graves and to honor veterans' service were 40 individuals from DLA Piper LLP, including staff, attorneys, and clients.

"We were honored to have the opportunity to participate in the mission of Wreaths Across America and pay our respects to veterans at Arlington National Cemetery," said Jay Epstein, a partner at DLA Piper. "The wreath-laying ceremonies organized by Wreaths Across America signify the importance of remembering our fallen heroes, honoring those who serve and teaching children about the sacrifices made by veterans and their families to preserve our freedoms."

Wreaths Across America was just one of dozens of volunteer projects performed by the legal community during the holiday season. From organizing clothing drives to manning soup kitchens, attorneys found numerous ways to help those in need.

The Drive to Help

There were clothing drives, toy drives, and food drives. At Hogan Lovells, attorneys organized a donation drive on behalf of Calvary Women's Services, which offers housing and services to homeless women to help them get back on their feet. Attorneys and legal staff assembled more than 70 Thanksgiving baskets brimming with food so that the women living at the shelter could enjoy a traditional holiday meal.

Hogan Lovells also joined more than 130 law firms and organizations to collect clothing, blankets, and individual financial donations for Gifts for the Homeless. The nonprofit is a particularly unique organization to the legal community because it is voluntarily run by lawyers, legal staff, and other professionals. One hundred percent of donations made go directly to the shelters because District-area firms absorb the overhead.

This year the organization collected more than 4,000 bags of used clothing, consisting of gloves, hats, sweaters, coats, boots, and pants. With the help of nearly 400 volunteers, those bags were distributed to 63 local homeless shelters.

Sponsoring Families

For the past 20 years, Miller & Chevalier Chartered has worked with the Salvation Army's Angel Tree Program, providing gifts to children who are under 12 and live in the District. Without their participation and the participation of others, families in need chosen by the Salvation Army would not be able to afford Christmas.

Laurel Glassman

Joe Edmondson, a partner at Foley & Lardner LLP, stands in front of mounds of bags filled with donated clothing. Edmondson serves as vice president for the Used Clothing Division at Gifts for the Homeless.

Led by member Patricia Sweeney and secretary Monique de Grace, the office originally planned to sponsor 100 children. Within a few weeks, stacks of toys and clothing filled the firm's atrium, while additional money was donated to buy more gifts. People even rolled in bicycles or helped assemble them in the area the firm called the "bicycle annex." The employees were so generous that the firm was able to sponsor an additional 20 children with all the gifts that accrued in the office.

"Over the years, we have been told by many participating members of the Miller & Chevalier 'family' that this program has become a high point of their holiday season. It certainly is for me," Sweeney said. "It really warms the heart to see the gifts we provide. The program truly puts you in touch with the spirit of the season."

DLA Piper's personal project throughout the holidays was adopting 18 families from the Children's Law Center and Neval Thomas Elementary School, a public school in the District. Money was raised to purchase, wrap, and deliver gifts to families who are without a home this year or are in need of help. Each family was presented with clothing, toys, and gift cards to grocery stores. The project was part of the firm's overall national pro bono signature project, Advancing Education's Promise, which aims to improve the quality of education from childhood to college by providing opportunities for attorneys to become involved with local schools and other education programs.

A Year of Giving

While the period from Thanksgiving to New Year's is often called the "season of giving" because of an increase in charitable work, many District law firms strive to create a year-round culture of giving back to the community through programs such as DLA Piper's Advancing Education's Promise.

At Hogan Lovells, attorneys in its offices around the world participate in Touch, which promotes focused engagement with the community. Each office works with a local charity, finding different activities to raise money and support its mission. Earlier in 2011, employees in the Washington, D.C., office nominated more than 30 nonprofits to be the firm's Touch charity. A committee chose six organizations from the list. To encourage active participation by all, the office held an open house in May where representatives from each charity set up tables and spoke to employees about their cause.

After a voting process, the firm chose So Others Might Eat (SOME), which

provides food, clothing, medical care, job training, and housing to the disadvantaged population in the District.

Since May, employees have helped with lunch service and clean-up at SOME, serving more than 300 people during a typical meal.

To date, the most popular event to benefit SOME has been the Wii bowling tournament held on August 5. There were 33 teams of attorneys and staff, each paying an entry fee and raising supporting donations. The one-day event raised approximately $20,000—$10,000 in individual donations and $10,000 in firm matching funds.

"[Giving back] is something a lot of firms do," said Stephen Propst, partner at Hogan Lovells. "It's the recognition that we, as lawyers, are very privileged. To some extent, we have an obligation, but also have an interest in giving back to the community. It is both a benefit to the community and a benefit to us as a way of getting to know the people and businesses and communities that we work in and with."—*T.L.*

A. J. Dhaliwal, a regulatory attorney at BuckleySandler LLP who assists clients in the financial services industry, was elected president. In that capacity, Dhaliwal will head the organization's board of directors.

During his term, Dhaliwal will focus on promoting the benefits of SABA-DC membership, including networking and professional development opportunities with the American Bar Association and the District of Columbia Bar. He also plans to help lead the organization as it works to ensure that South Asian people are able to obtain legal services when their civil or human rights are violated.

SABA–DC members elected Kavitha J. Babu, a trial attorney with the civil division of the U.S. Department of Justice, as executive vice president.

Other members of the board include: Jaya Saxena, vice president of programming; Milan Dalal, vice president of communications; Shuchi Batra, vice president of finance, Hardeep Grover, newsletter editor-in-chief; and Aarti Shah, secretary.

General directors are Puneet Arora, Ajay Gohil, Vamsi Kakarla, Rashi Mittal, Neal Shah, and Moh Sharma.—*T.L.*

AU Kicks Off Law School's 2012 Founders' Celebration

From January 12 to May 25 American University Washington College of Law will host its annual Founders' Celebration, honoring the university's founding mothers, Ellen Spencer Mussey and Emma Gillett.

This year, the five-month-long celebration will consist of 87 events, from seminars to panel discussions about current issues facing the legal profession. Legal experts will cover a range of topics, including international trade, labor rights, military justice reform, domestic violence, privacy issues, climate change, and the global economy.

Students, alumni, judges, and members of the community are welcome to attend. Many of the programs offered can be used to receive continuing legal education credits for legal professionals.

The Founders' Celebration kicked off on January 12 with an information fair for first-year law students to learn about the different programs at the Washington College of Law. The first panel discussion took place on January 20. In an all-day forum, "Transparency in the Obama Administration—A Third-Year Assessment," experts evaluated the Executive Branch, looking at both the highlights and lowlights of government transparency efforts during President Obama's first term.

Last year, the celebration drew 7,000 attendees and featured 86 programs and nearly 650 speakers. More than 1,000 diverse organizations also were represented during the celebration, including governmental departments, nongovernmental organizations, international organizations, U.S. and foreign law schools, law firms, and embassies.

The event was created to honor Mussey and Gillett, who established the Washington College of Law in 1896, becoming the first law school in the nation founded by women.

For more information, visit www.wcl.american.edu/secle/founders/2012.—*T.L.*

Nominations Sought for Justice Potter Stewart Award

The Council for Court Excellence (CCE) is accepting nominations for its 16th Annual Justice Potter Stewart Award, which is presented annually to members of the local and federal justice system who exemplify the very best in the administration of justice.

To be considered, nominees must live or work in the Washington metropolitan area, and should be an individual or group whose contributions to the administration of justice, the legal system, or the administrative aspects of government in the District have been significant and sustained.

The CCE anticipates presenting two Justice Potter Stewart Awards this year, one of which may be given to an "unsung hero" who has worked with little or no public acclaim. Current CCE board members or sitting judges are not eligible.

The award(s) will be presented at the CCE's annual Justice Potter Stewart Dinner on May 10 at the Organization of American States, 17th Street and Constitution Avenue NW.

Nominations must be sent by February 8 either in hard copy form to the Council for Court Excellence, 1111 14th Street NW, Suite 500, Washington, DC 20005, or online at http://www.surveymonkey.com/s/5VDXSZB.

The CCE is a nonprofit, nonpartisan civic organization that works to improve the administration of justice in the local and federal courts and related agencies nationwide and in the Washington metropolitan area.—*K.A.*

Early Bird Registration Ongoing for ASIL Meeting

Online registration is open for the American Society of International Law's (ASIL) 106th annual meeting on March 28 to 31 at The Fairmont, 2401 M Street NW.

The annual meeting brings together more than 1,200 practitioners, academics, and students each year to debate the latest developments in their field. This year's meeting will look at how international law responds to complexity and address such questions as which problems is international law particularly well-suited to solve, which seem to defy its regulation, and what tools does international law have to manage this complexity.

For more information and to register, visit www.asil.org. For assistance, contact Tia Pickeral, ASIL's conference registration manager, at tpickeral@courtesyassoc.com or at 202-367-2383.—*K.A.*

Reach D.C. Bar staff writers Kathryn Alfisi and Thai Phi Le at kalfisi@dcbar.org and tle@dcbar.org, respectively.

Mind Over Murder?

Mental Health Cases Fuel Rights vs. Safety Debate

By Thai Phi Le

When Jared Loughner first enrolled full-time at Pima Community College in Tucson, Arizona, in 2007, he was just the odd student in the classroom that no one paid mind to. As the semesters continued, however, he exhibited more odd behavior and the number of bizarre disturbances began to increase.

He would go on rants, make incoherent arguments, and intimidate his teachers. He once confronted his Pilates instructor about his grade, aggressively arguing that the B he received was unjust. She later stated in a police report that she worried the argument would become physical. The encounter left her shaken. In another instance, Loughner interrupted math class to debate extensively with his professor that he should be allowed to refer to the number six as the number 18 if he wanted to.

Between February and September 2010, police were called five times to deal with his outbursts. He made YouTube videos stating that the government was attempting to control people through grammar, and another calling his "genocide school" unconstitutional.

On January 8, 2011, less than four months since his last encounter with police, the strange student became a 22-year-old murderer, killing six people and injuring 14 others, including U.S. Rep. Gabrielle Giffords, during a shooting rampage.

The Arizona attack is the most recent in a list of mass shootings from seemingly unstable individuals. During the Virginia Tech massacre in April 2007, Seung-Hui Cho killed 32 people and injured 25 others. In February 2010, Amy Bishop, a professor, killed three colleagues and wounded three others at the University of Alabama, Huntsville. Both exhibited signs of potential mental illness.

After the Arizona shooting, the story was splashed across newspapers nationwide and difficult questions were posed. Why weren't the warning signs acted upon by local authorities? Could Loughner's murderous spree have been prevented by more vigilant law enforcement? Would stricter involuntary commitment laws have saved lives? In short, did the mental health system fail the community? If so, can the law and the health care system be reformed to better protect both the mentally ill and society at large?

Illustration by Ron Flemmings

The Early Days

Treatment of the mentally ill has a sordid past. Throughout the early to mid-1900s, several states enacted eugenics sterilization laws allowing for the sterilization of the "insane" and "feeble-minded."

According to the Eugenics Archive, which is run by the Dolan DNA Learning Center, Virginia adopted the Eugenical Sterilization Act in 1924. The law focused on "defective persons" to decrease the chances of "transmission of insanity, idiocy, imbecility, epilepsy and crime," and to help save money in funding public psychiatric hospitals.

Under the law, 18-year-old Carrie Buck was the first to be sterilized. Her guardian attempted to appeal the procedure, but to no avail. Prosecutors paraded a slew of witnesses to discuss Buck's mother, who resided in a mental institution, as well as experts who spoke about the teen's alleged promiscuity and lack of intelligence.

The case, *Buck v. Bell*, eventually went to the U.S. Supreme Court, where her lawyers argued that the due process clause of the Fifth Amendment gave Buck the right to have children. In addition, by sterilizing her and not all others in similar situations, the state was violating the equal protection clause of the Fourteenth Amendment. In an 8–1 decision, the Supreme Court ruled that the Virginia State Colony for Epileptics and Feebleminded, run by Dr. James Hendren Bell, could sterilize Buck.

"We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, to prevent our being swamped with incompetence," wrote Justice Oliver Wendell Holmes in the majority opinion. "It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind."

By the time the Eugenical Sterilization Act was repealed in 1974, Virginia had sterilized 8,300 people.

Among the most common and now reviled treatments of the mentally ill is the lobotomy, which removes the frontal lobe of the brain. The popularity of the procedure soared in the 1940s. According to the PBS documentary *The Lobotomist*, 150 lobotomies were performed in 1945. By 1949, the number had skyrocketed to 5,000 annually. While the surgery left patients calmer and less agitated, many reverted to vegetative or child-like states.

Electroconvulsive therapy (ECT) remains a controversial treatment today, with patients restrained and seizures induced to relieve symptoms of mental illness, particularly depression. Critics argue that ECT causes permanent brain damage.

In addition to controversial and sometimes inhumane therapies, public psychiatric hospitals faced serious issues of understaffing and overcrowding as the number of patients grew exponentially. Abuses ran rampant. With limited criteria, asylums filled up with people from all walks of life. While some were in desperate need of care, others were simply outlier members of society or people who were difficult to take care of, including the elderly and alcoholics. Many people were imprisoned in mental institutions for years on end—some with no plausible reason for confinement, and others with no promise of treatment to get better.

Dr. Morton Birnbaum, both a lawyer and doctor, sought to change this. As one of the first advocates of the mentally ill, he authored his seminal article "The Right to Treatment," which was published in the *American Bar Association Journal* in 1960. Indefinite confinement without adequate treatment was a violation of a person's Fourteenth Amendment right to due process and liberty, he argued. If people were to be confined against their will, then they should be afforded adequate care to help them get better. Birnbaum stated that without proper treatment, mental institutions were acting simply as prisons and depriving people of their freedom for an indeterminate amount of time. "[B]eing mentally ill is not a crime," he wrote.

Birnbaum's article and its ideas were later cited by D.C. Circuit Judge David Bazelon in his opinion in the 1966 case *Rouse v. Cameron*. In the case, 18-year-old Charles Rouse was charged with carrying a weapon without a license. He was committed to St. Elizabeths Hospital in Washington, D.C., after he was found not guilty by reason of insanity. After many years, he petitioned for his release, stating that his attorney entered the insanity plea without his consent.

Overseeing the case, Judge Bazelon said the government had an obligation to provide treatment to patients confined in mental hospitals. The case marked the first time that an appellate judge stated that a person has a right to treatment when civilly committed.

With *Rouse v. Cameron*, the legal landscape regarding treatment of the mentally ill began to shift. Slowly, more cases made their way up to the Supreme Court.

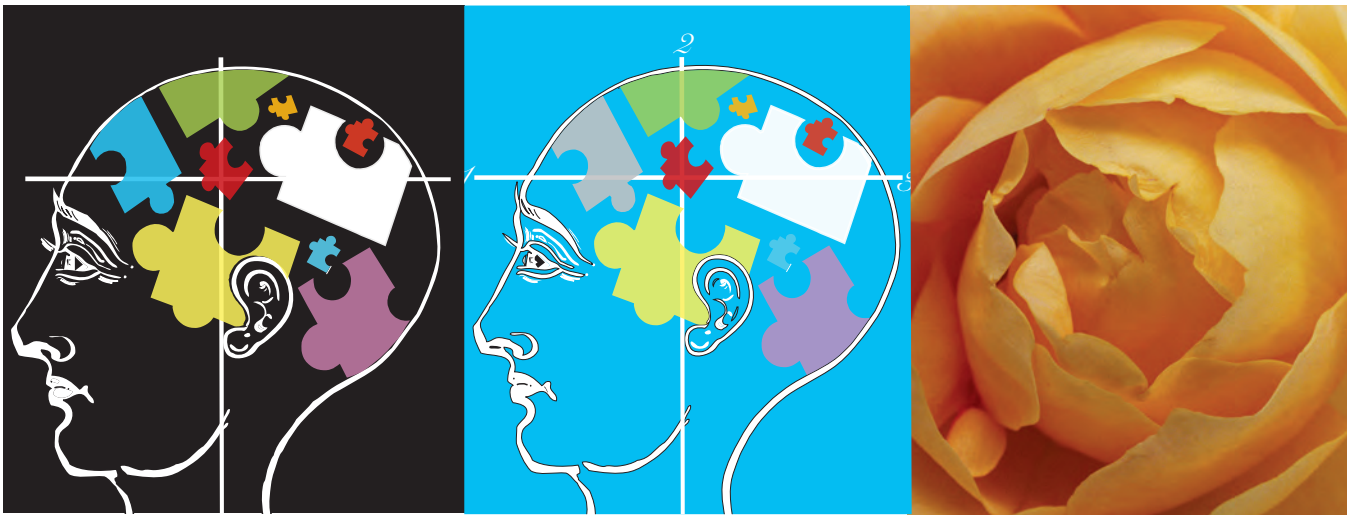
As his concept gained public attention, Birnbaum was contacted by Kenneth Donaldson, who sought his help to file a case against the Florida State Hospital. Donaldson, at the urging of his parents, checked into the hospital in 1957 after showing signs of delusion. This was his second stay at a mental health facility.

While at Florida State Hospital, Donaldson was diagnosed as a paranoid schizophrenic, but presented no danger to either himself or others. He petitioned for his release numerous times, stating that he was not receiving adequate treatment at the facility. Donaldson cited the fact that he rarely interacted with the hospital staff, was not permitted to engage in activities that would help him establish independence to make him ready for future interaction in society, and was simply receiving custodial care.

With Birnbaum's help, *O'Connor v. Donaldson* reached the U.S. Supreme Court by 1975, which ruled that after 19 years of involuntary confinement, Donaldson should be released because he did not pose a threat to anybody.

Cases like *Rouse v. Cameron* and *O'Connor v. Donaldson* put the spotlight

INDEFINITE CONFINEMENT WITHOUT ADEQUATE TREATMENT WAS A VIOLATION OF A PERSON'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS AND LIBERTY. IF PEOPLE WERE TO BE CONFINED AGAINST THEIR WILL, THEN THEY SHOULD BE AFFORDED ADEQUATE CARE TO HELP THEM GET BETTER . . . "BEING MENTALLY ILL IS NOT A CRIME." —Dr. Morton Birnbaum



on the treatment and rights of the mentally ill, and the movement to deinstitutionalize many of them gained traction. States initiated the process of closing down mental institutions, and patients were released back into the community. The original goal was to create community-based programs to help reintroduce the patients into the general population, but those failed to materialize.

Instead, thousands of previously institutionalized individuals and their families were left to fend for themselves with limited access to treatment and important programs such as supportive housing or job training to keep them on track.

The Legislative Response

As states began deinstitutionalizing psychiatric patients, lawmakers sought to address the problems posed by the shifting legal landscape by enacting new legislation. The publicity and precedent created by the cases before the Supreme Court placed greater emphasis on ensuring proper care and prevention of unnecessary confinement.

To meet these demands, Congress—under the leadership of President John F. Kennedy—passed the Community Mental Health Act in 1963, which provided federal funding for community-based mental health facilities. In addition, the legislation provided grants to states to help build local mental health centers.

Unfortunately, some states simply closed down their money-draining state hospitals and did not establish community health centers to help those in need of mental health care. Some patients were again without adequate treatment, but this time, instead of confinement, many were living on the streets, in adult homes, or with their families who did not have the expertise to handle mental illness. On the other hand, the risk of unwarranted civil commitment was drastically reduced, saving many from unlawful loss of liberty.

At Risk of Danger

With the memory of previous abuses in public psychiatric hospitals fresh in their minds, lawmakers created stricter standards to involuntarily commit a person to inpatient treatment. According to the American Bar Association (ABA) Commission on Mental and Physical Disability Law, 44 jurisdictions, including the District of Columbia, require a person to have a "serious or severe mental condition." Each state has adopted its own criteria that must be met before a person can be civilly committed, which may include requirements to use the least restrictive available treatment, a long history of violence, incompetency to make treatment decisions, and—among the most contested criteria—a "danger to self and others." The ABA Commission on Mental Health and Physical Disability Law (renamed to the Commision on Disability Rights in 2011) states that 36 jurisdictions, including the District, include some form of "danger to self or others" element.

"The current law requires someone to become dangerous to themselves or others [before we treat them]. That's ludicrous. The law should prevent violence, not require it," says DJ Jaffe, founder of Mental Illness Policy Org., an organization whose stated mission is to provide "unbiased and easy-to-access information to the media and policymakers about care and treatment of people with serious and persistent mental illness."

Some proponents of broadening the law believe that it would allow people to get needed treatments earlier, helping to prevent harm or potential crimes. "Most of the mental health establishment will tell you that people with mental illness are no more violent than others. That is true if you consider that 46 percent of the population has a diagnosable mental illness," Jaffe says. "But it's not true when you talk about the 6 to 8 percent who have severe mental illness and a past history of violence. It's not true that they're less likely to be violent in the future."

Jaffe points to the study "Civil Commitment Law, Mental Health Services, and U.S. Homicide Rates," conducted by researcher Steven P. Segal from the University of California, Berkeley. Segal looked at the correlation between less restrictive criteria for involuntary civil commitment and the rate of homicide, taking into consideration the different standards at various mental health systems, including greater access to inpatient beds and better performing hospitals.

"The associations documented herein between the homicide rate and the [involuntary civil commitment] criterion would appear to indicate that the broader criteria when used in the determination of *who* and *when* a patient is placed on [involuntary civil commitment] are more effective in curtailing homicide risk than the more narrow, dangerousness focused criteria," Segal wrote. The results were published in *Social Psychiatry and Psychiatric Epidemiology* in November 2011.

Michael Biasotti, who has a close family member diagnosed with schizophrenia, agrees with the study results. In addition to his loved one, he deals with the mentally ill at his job where he is chief of police for the New Windsor Police Department in New York. The subject is so important to him that he focused the research for his thesis (finished in 2011)

Illustration by Ron Flemmings / Photograph by Photodisc

for the Naval Postgraduate School on the management of the severely mentally ill and its effects on homeland security.

"The most heinous crimes you're going to see have to do with the severely mentally ill," Biasotti says. He points to the November shooting at the White House by Oscar Ramiro Ortega-Hernandez, a person who believed he was a "modern-day Jesus Christ" and needed to kill President Barack Obama. "That goes back in history, unbelievable amounts of time. The mentally ill population has had more attacks on our political leaders than any al Qaeda group has."

By mentally ill, Biasotti is referring specifically to those with severe disorders like schizophrenia and bipolar disorder, who go untreated. According to the National Institute for Mental Health, 6 percent of the population suffers from a serious mental illness. They are the very small portion of the mentally ill population Biasotti deems dangerous. "They have no fear," he says. "A bank robber on many occasions, when he's surrounded, will throw the gun down and put his hands up. A psychotic or schizophrenic individual who believes what he's doing is true and correct, and God is demanding him to do this, is more likely to be shot by police or more likely to shoot a policeman."

Biasotti's family member is one of the unpredictable members of the mentally ill population. When untreated, she firmly believes the voices she hears in her mind. Biasotti recounts a conversation he had with her when she had a steady job, but decided she was feeling good enough to go off her medication. After a few days off her antipsychotic drugs, she was complaining about how a coworker was bothering her at work. '"She says nasty things to me,"' Biasotti recalled her complaining. When he asked her if her supervisor has witnessed it, Biasotti's loved one replied, "she doesn't physically. She's beaming it to me through her mind. I feel like going over there and punching her."

With less restrictive commitment standards comes reduced criminalization of the mentally ill, Biasotti argues. "Society is not used to somebody standing on the street corner talking to God. They generate more police cars," he says. There's nothing the police can do, though, until they are immediately dangerous, so the individual continues to be a nuisance for law enforcement until he or she is arrested for something like disorderly conduct.

"It all creates a burden on the criminal justice system. They end up in prison for acts while unmedicated. They become the worst prisoners in prison. They're the high-maintenance prisoners," Biasotti says. "It's not fair to the prisoner. It's not fair to the system. I certainly remember the horror stories of the mental facilities and that shouldn't be, but at some point, there needs to be protection for the community."

While criminalization is a common problem in the mentally ill population, Ron Honberg, the national director for policy and legal affairs at the National Alliance on Mental Illness (NAMI), does not believe that broadening the civil commitment criteria would have an effect on crime. "I've never seen any evidence that stronger civil commitment laws prevent violence," Honberg says. The 1998 McArthur Study, often cited by numerous mental health professionals, found that the mentally ill, who did not have substance abuse issues, were no more violent than the general population.

Take the case of the Arizona shooting. "I don't think anyone can say with confidence that if, for example, the civil commitment criteria in Arizona had been different, or in any other place where there might be such a shooting might be different, it could have been prevented," says Richard Bonnie, a professor at the University of Virginia School of Law and chair of the Commonwealth of Virginia Commission of Mental Health Law Reform.

Arizona, in fact, actually has one of the broadest criteria for involuntary commitment in the United States, allowing anyone to contact authorities to investigate a person if he or she is showing signs of eroding mental health. The petitioner is required to have two witnesses who also saw the erratic behavior. Unlike many states, Arizona law does not mandate signs of dangerousness to self or others before an individual can be civilly committed.

"Obviously, there is some relationship in terms of acute deterioration and violence when people basically lose rational control over their behavior," says Bonnie, but he's quick to note that the greater concern is harm to self by those diagnosed with a psychiatric behavior, and Honberg agrees.

On the Ledge

The discussion, both Honberg and Bonnie say, should be looked at in the context of preventing violence from the mentally ill against themselves. While Honberg disagrees that less restrictive civil commitment standards will reduce crime, he encourages the removal of proof of dangerousness. Such narrow interpretations of the "danger to self or others" clause would allow for needless deterioration before intervention, NAMI states in its Policy on Involuntary Commitment and Court-Ordered Treatment.

"A fair question can be raised [about] whether waiting until somebody is imminently, provably dangerous—is that really the proper standard or is that too narrow a standard? Is that the best for the individual themselves? Is that the best for society?" Honberg asks. "The standard ought to allow for an intervention, that you ought to at least be able to take history into consideration and that you should be able to look at that person's need for treatment."

Only four states require an imminent danger to self criterion. Until 2008, Virginia was among them, but it modified the language as part of the state's overall initiative to reform its mental health system to help those in need access more easily treatment and other mental health services.

"We did have as our criterion then that a person had to pose an imminent danger to self or others. That is susceptible to an unduly narrow interpretation of 'This is going to happen in the next 24 hours or five minutes,'" says Bonnie, chair of Virginia's Commission of Mental Health Law Reform. "I wouldn't want to emphasize that if you just change the commitment criteria that you're going to have much of a dent in the overall problem because the issue is getting people into services voluntarily before they get to a point where civil commitment is a possibility."

Assisted vs. Involuntary

A controversial alternative to involuntary inpatient commitment is assisted outpatient treatment, which allows for those with psychiatric disorders to live in the community, but requires them to follow court-ordered treatment. Forty-four states and the District have some form of assisted outpatient treatment. The two most well-known programs are in some counties of New York, referred to as Kendra's Law, and California, called Laura's Law, which was modeled after Kendra's Law.

Kendra's Law was passed in November 1999 after 29-year-old Andrew Goldstein, a diagnosed schizophrenic who was off his drugs, pushed Kendra Webdale off a New York City subway platform in front of an oncoming train and to her death. The law states that a court can order outpatient treatment for a person who exhibits a history of harmful behavior and noncompliance with treatment.

Advocates say the law reduces the number of hospitalizations, the length of hospitalization, court costs, incarceration parole costs, violence, homelessness, and suicide. "There's not a barometer you can think of

that Kendra's Law doesn't positively impact financially," notes Jaffe of the Mental Illness Policy Org.

He is backed by a 2005 study released by the New York State Office of Mental Health, which found that of those in the program, 74 percent fewer experienced homelessness; 77 percent fewer experienced psychiatric hospitalization; 83 percent fewer experienced arrest; and 87 percent fewer experienced incarceration. In addition, 81 percent of those who received assisted outpatient treatment said that it helped them get better and stay healthy.

A research team led by Bruce G. Link of Columbia University also released a study in May 2011, published by *Psychiatric Services,* that showed similar positive outcomes. The group followed 183 patients receiving treatment at outpatient clinics in New York City. Half were under Kendra's Law and the other half were not. They found that those under Kendra's Law were 8.6 times less likely to be arrested for a violent offense.

Critics of assisted outpatient treatment programs are not convinced. Among them is David Oaks, executive director of MindFreedom, an organization that works to eliminate human rights violations in the mental health system. More than 60 percent of the group's members call themselves psychiatric survivors, including Oaks himself. Oaks was diagnosed schizophrenic at 19 while attending Harvard University.

"IT ALL CREATES A BURDEN ON THE CRIMINAL JUSTICE SYSTEM. THEY END UP IN PRISON FOR ACTS WHILE UNMEDICATED. THEY BECOME THE WORST PRISONERS IN PRISON. THEY'RE THE HIGH-MAINTENANCE PRISONERS." —Michael Biasotti

In the case of Kendra Webdale, Oaks emphasizes that Goldstein had been seeking help, but he was unable to receive it. "It's not a case where a court order was the difference. It was adequate help and resources," he says. "[Kendra's Law is] really an involuntary outpatient commitment. Our opponents will use the phrase 'assisted treatment.' Right, like having money removed from my wallet by a mugger is assisted banking."

In an opinion piece in *Mental Health Weekly* in April 2005, Harvey Rosenthal, executive director of the New York Association of Psychiatric Rehabilitation Services, stated his opposition to Kendra's Law and programs similar to it, while also discounting the Office of Mental Health study.

"The [Office of Mental Health] research is based almost entirely on the opinions of case managers and, unlike the Bellevue Study, fails to provide a comparison with a control group of those who received a voluntary package of similarly improved, well-coordinated services, including housing and case management," he wrote.

The Bellevue Study stated that those who received a "better-coordinated package of services," regardless of whether it was court-ordered or not, had the same outcome as those coerced into treatment. The Office of Mental Health study, Rosenthal argued, didn't factor in the fact that Kendra's Law simply made access to treatment easier.

In addition to questioning its efficacy, opponents such as Oaks state that assisted outpatient treatment is a violation of a person's civil liberties and due process promised in *O'Connor v. Donaldson*. As stated earlier, the U.S. Supreme Court ruled that it was unconstitutional to confine a person with a mental illness, who did not pose a danger to him- or herself or others, against his or her will. "Since then, the standards have [been] very much corrupted so that there are many states now that essentially have laws that if you have a likelihood to deteriorate in the future because you are not getting the psychiatric care that the system wants, that is considered danger to self and others," Oaks says. "In other words, saying no to the current system is being seen as being dangerous."

Jaffe argues that by supporting involuntary outpatient commitment does not mean a person is anti-rights of the mentally ill. "I want to protect the rights of people with mental illness, including their rights to get treatment. I don't think this is the alternative to protecting their rights. It's a way to protect their rights to prevent them from inpatient commitment or incarceration," he says. "Being psychotic is not an exercise of civil liberties. It's the inability to engage in a meaningful exercise of free will."

Oaks points out, however, that millions of Americans are diagnosed with bipolar disorder or schizophrenia. According to the National Institute of Mental Health, that's 8.1 million Americans. Are they all subjected to coerced outpatient commitment?

No, answers Biasotti. The hurdles to jump to qualify under Kendra's Law and Laura's Law are considered very high. According to the Office of Mental Health in New York, to fall under Kendra's Law, a patient must be 18 years or older; have a mental illness; is clinically determined to unlikely survive safely in the community without supervision; have a history of lack of compliance with treatment for mental illness that has led to at least two

Illustration by Ron Flemmings / Photograph by Photodisc

hospitalizations over the past 36 months or at least one act of serious violent behavior, including threats, over the last 48 months; is unlikely to voluntarily receive the recommended treatment; is in need of treatment to prevent deterioration of their mental illness that could lead to harm; and will likely benefit from treatment.

Even with the strict criteria, Oaks believes involuntary outpatient commitment laws are punishment for those diagnosed psychotic for simply being mentally ill. They have yet to commit a crime when they are ordered into treatment. "The idea of involuntary outpatient commitment, they'll argue, is because there's people like Loughner, therefore people should be on forced outpatient drugging in general. It's kind of a dragnet, like mental profiling where you say, 'That group there with that "x" label—you've got to keep them on psych drugs.'"

Would people be able to lock up members of a community who have drug and alcohol issues and are former prisoners, but have not committed another crime, Oaks asks. "Preventative detention, that's what's going on with us. Just because we're diagnosed psychotic and schizophrenic, we're told that we're rounded up," says Oaks.

"I think [the opposition] likes to portray that people are going to be rounded up and forced into mental institutions, but that's not what this is about," counters Biasotti. For him, it's about ensuring that people like his loved one receive the treatment they need to be productive members of society. When his family member stays on her medications, she is able to hold down a job, have friends, and act as part of the family. All that disappears soon after treatment ends.

Forced Medication

To say that Biasotti is an advocate for forced treatment in people with severe cases of psychiatric disorders is an understatement. He brings up his family member again, calling it a "fast downhill slope" after she stops taking her drugs. It's only a matter of days, he says. "If she takes her medicine, she leads a normal, productive life. When she does not, she's on the street corner crouched over, talking to God."

He questions why anyone would wait to make a person take antipsychotic drugs until they exhibit dangerous behavior, comparing it to appendicitis. If a person keels over in pain and realizes their appendix has burst, they know to go to the hospital to get it removed or face serious health complications or death. "When the brain is the organ where the issue is, and it doesn't have the ability to make the decision that it needs help, well, I think it's incumbent upon society or family to step in," Biasotti says.

Both he and Jaffe believe that forced medication is a necessary preventative tool to ensure the safety of both the mentally ill person and the public. "The real crime is letting people go untreated, and they become psychotic and then are incarcerated for a crime that could have been prevented. That's a much more serious crime," Jaffe argues.

As for the argument that coerced treatment is a violation of people's civil liberties? "We can champion their civil rights right into the grave," Biasotti says. He notes that each time his loved one stabilizes, she is thankful for the treatment and vows to stay on her medication. Unfortunately, when she feels like she's doing okay, she tends to stop taking the drugs and the cycle starts anew.

Adds Jaffe, "Even someone psychotic and saying, 'I am Jesus Christ. I am going to kill the world,' that person, in these people's minds, has a right to refuse treatment." That person, for Jaffe, is often someone afflicted with a condition coined as anosognosia, where individuals are unaware that they have a neurological defect. It was named by neurologist Joseph Babinski in 1914 and is frequently cited in cases of those with brain injury or stroke. People with Alzheimer's can be diagnosed with anosognosia as well.

"THE REAL CRIME IS LETTING PEOPLE GO UNTREATED, AND THEY BECOME PSYCHOTIC AND THEN ARE INCARCERATED FOR A CRIME THAT COULD HAVE BEEN PREVENTED. THAT'S A MUCH MORE SERIOUS CRIME." —DJ Jaffe

In the article "Impaired Awareness of Illness: Anosognosia," Dr. E. Fuller Torrey, a research psychiatrist specializing in schizophrenia and bipolar disorder and founder of the Treatment Advocacy Center, stated that approximately 50 percent of individuals with schizophrenia and 40 percent of individuals with bipolar disorder have anosognosia.

The study "The Prevalence and Correlates of Untreated Serious Mental Illness," published in 2001 by the Health Services Research, seems to support Torrey's claims that anosognosia is affecting people's judgment in taking their medication. Researchers interviewed 9,282 people diagnosed with a severe psychiatric disorder and found that 55 percent cited the fact that they didn't believe they were sick as one of the reasons for refusing treatment.

Oaks, however, not only sees forced drugging as a violation of civil liberties but also states that it's inaccurate science. "What the public tends not to know is that there is never any proof of a chemical imbalance theory. It's one of many theories, and there's no test for any known chemical balance," he says. "There's no blood test. There's no brain scan. There's never been any scientific evidence. You can't even measure a live brain's chemical balances. It's all been theoretical."

Illustration by Ron Flemmings / Photograph by Photodisc

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And the drugs brought in to fix the alleged chemical imbalance are dangerous, potentially causing agitation and shrinkage to the frontal lobe of the brain after prolonged use of certain neuroleptic drugs. In February 2011, the *Archives of General Psychiatry* published a study out of the University of Iowa Carver College of Medicine, "Long-Term Antipsychotic Treatment and Brain Volumes," which found that antipsychotics may play a factor in reducing the volume of brain tissue.

A 2005 study from the University of Pittsburgh published similar results seen in a group of monkeys subjected to neuroleptics. "The Influence of Chronic Exposure to Antipsychotic Medications on Brain Size Before and After Tissue Fixation: A Comparison of Haloperidol and Olanzapine in Macaque Monkeys" was published by *Neuropsychopharmacology.*

"You've bought into it that these chemicals are somehow magical fairy dust to fix this mythical chemical imbalance and keep people all peaceful and happy," Oaks says. That doesn't mean a person shouldn't choose to follow a treatment plan, Oaks says. He emphasizes that MindFreedom is not against the use of antipsychotic medication, or neuroleptics, as they are often referred to. The group is pro-choice, believing the person diagnosed with the psychiatric disorder should be at their own liberty to make decisions about how to handle their mental illness.

But the question remains, if a person chooses to go untreated, is the risk of harm both to self and others greater? "Whether one thinks that the person ought to be treated over their objection or not, the law says that they can," Bonnie says. "The most important thing that you can do to reduce the risk of violence among people with mental illness is to reduce the level of untreated mental illness, particularly the number of people who are experiencing mental health crises—acute deteriorations of condition."

Mentally Fit for Trial

Despite efforts by mental health advocates, some people's conditions will deteriorate, and a portion of those will commit a crime. According to NAMI, 16 percent of inmates have a serious mental illness. Others are awaiting trial. How do we treat those who are deemed not mentally fit to stand trial? According to Bonnie, in the case of less serious offenses, many people found incompetent to stand trial are referred to treatment. The treatment that restores them to competence to stand trial also stabilizes their condition, and eventually, the outcome of the case is the charges are dropped or a diversion occurs out of the criminal justice system. For many of those convicted, the sentence is often continued care through mental health services instead of imprisonment.

For more serious felony offenses, however, the issue of restoring competency through forced drugging is trickier. On one hand, there is the right of the person to refuse treatment, as established in *Rennie v. Klein*. However, the Supreme Court in *Riggins v. Nevada* has stated that you can treat someone over their objections to restore them to competency to stand trial.

"But there has to be a judicial determination as to whether state interest is strong enough in bringing them to trial to override their right to refuse treatment," Bonnie says. While the Loughner case is still in the early phase, judges ruled in August that he could be forcibly medicated in an attempt to get him mentally fit for trial. "It's hard to imagine a case where the public interest is stronger in terms of restoring someone to trial and bringing them to the criminal justice system than would be true in this case," he adds.

Is there a concern, however, that the prosecution in these rare but very serious cases is more concerned with punishment than rehabilitation of the mentally ill? Honberg thinks that's a possibility. "[NAMI] believes that treatment should be for therapeutic purposes. In the criminal context, the real purpose, the reason why the state of Arizona or the federal government want to treat Jared Loughner, has nothing to do with his therapeutic well-being. It has all to do with wanting to bring him to trial and prosecute and punish him."

Would it be in the best interest of the defendant to remain incompetent for trial to stay out of the criminal justice system? Bonnie doesn't think so. "It is not in the defendant's interest to be regarded as chronically ill and be civilly committed for an indeterminate period for restoration of competence. It is just generally not going to be the case where the defense basically wants a chronically incompetent person so they cannot come to trial," he says. And for those found guilty, he argues that the likelihood is high that they would be diverted into the mental health system for treatment.

Honberg, however, wrestles with the question whether restoring competency is fair to the mentally ill person who has committed a crime. "If they see somebody before them who seems like he's fairly stable, understands the process, participates meaningfully in his own defense, how likely is it that they're going to be able to project that, at the time of the crime, he was a very different person?" he asks.

For Oaks and his organization, it's not a question but a reality. "This idea to establish competency is so bizarre because I have been on a neuroleptic. It doesn't make you more lucid. We know people who were heavily drugged, but never had a chance at a fair hearing because they were so cloudy, so out of it, so zombified by the psych drugging that they actually were deprived to the right to a fair hearing."

Treatment for All

While there are clear sides to the fight over how to treat the mentally ill without their full cooperation, all agree that getting an individual to voluntarily agree to treatment and improving a person's access to mental health services are the best approaches to ensure success.

"Unfortunately, the gateway into services too often now is arrest," Bonnie says. "We need to do it better." He urges greater follow-up after a person is discharged from the hospital, increased access to services for both the individual and their families, and removing barriers such as stigma to make the person more comfortable with going to receive treatment on their own.

Oaks urges greater advocacy on behalf of those diagnosed with a psychiatric disorder. He'd like to see more trained judges and public defenders who better understand the issues of the mentally ill. He wants to see attorneys "fighting hard" for their clients' wishes. "We're not questioning the ideals of the country, of what we're founded on. The idea that we all should be agreeing and following laws that we've created with our duly elected representatives should apply to everyone equally. That if we're accused of violating it, we're innocent until proven guilty and we can go in front of a court of law and have our day in court where we're fairly represented," he says. "That's beautiful. It ain't happening."

For Honberg, he points out the need for funding in a time of scarce resources. State mental health budgets have faced drastic cuts—about $2 billion this past year, not including Medicaid. Community programs have closed. Hospital beds have been eliminated. With limited places to treat a person, even the best laws will be of no use.

"The court order is just the legal mechanism. Whether a person is going to get the treatment they need is the big question," Honberg says. "If they don't, then the court order isn't worth the piece of paper it's written on."

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WHEN HOPE FADES,

Pro Bono's HCAP Program Springs Into Action

BY THAI PHI LE

Ten years ago, Darrin Richardson was diagnosed with emphysema. Fighting an incurable lung disease was a familiar battle for him. His daughter, Clarissa, then 14 and living with her mother in New Jersey, had severe chronic bronchitis and had struggled with it ever since she was born.

While separated by state lines, the two had a common bond, sharing similar and often debilitating symptoms. Constant wheezing and coughing were considered normal for the two. Everyday living could be a struggle. Chores around the house were exhausting. Breathing was hard. But each day for the next seven years, Richardson would get up and go to his job as a manager for IHOP, tending to the staff and cooking in the kitchen. In 2007 everything stopped.

Richardson's health had deteriorated so badly that his doctor told him he would die without a double-lung transplant. Until he could receive the surgery, he would need to walk around with an oxygen tank, a major fire hazard in the IHOP kitchen. Unable to perform his daily duties, Richardson was soon out of a job. The kicks kept coming when he lost his home to a fire in 2008.

Around the same time, his daughter's health also had spiraled out of control. Her strength was gone. Her breathing labored. Her 21-year battle with lung disease was coming to an end. She died on August 16, 2008.

The 20 Percent

In the span of about a year, Richardson had lost his job, his health insurance, his home, and most precious of all, his daughter. The only thing he felt he had left to fight for was his life, and he couldn't even afford it.

Darrin Richardson and his caregiver, Stephanie Wilson

Photographs by Patrice Gilbert

Without employment prospects, Richardson applied for both Medicare and D.C. Medicaid. His caregiver Stephanie Wilson helped Richardson line up Medicare as his primary insurance and D.C. Medicaid as his secondary insurer.

Soon after Medicare approved his surgery, Richardson made an appointment with Inova Fairfax Hospital. Medicare only pays 80 percent of the double-lung transplant, hospital staff told him. Get D.C. Medicaid to look at your case and make sure you're approved for the rest, staff suggested. He was not.

D.C. Medicaid denied his request, citing the fact that its plan states specifically that it does not cover lung transplants. "I thought I was going to die. There was nobody to help me. They told me I had to move to Virginia or Maryland to get this operation done because D.C. Medicaid was not going to pay the 20 percent," Richardson said.

The transplant itself was going to cost an estimated $807,000, but when it was all said and done, his surgery would total nearly $1 million. Twenty percent of $1 million was insurmountable. Where would the money come from?

Improving Access to Health Care

In 2008 the D.C. Bar Pro Bono Program's Health Care Access Project (HCAP) was created to help low-income District

residents receive legal representation when they are being denied health care, including medical treatments and medication, due to problems with obtaining pre-approval from insurance companies or unsatisfied medical debt.

"We understood how important this work would be for our clients, to have a lawyer help them access necessary medical care," said Mark Herzog, associate director of the D.C. Bar Pro Bono Program. "We never imagined that our lawyers would literally be saving lives."

According to Statehealthfacts.org, a project of the Henry J. Kaiser Family Foundation, 40 percent of the low-income adult population in the District was on D.C. Medicaid in 2009, while 28 percent had no coverage at all.

Even those with insurance are often weighed down with medical debt because certain medications or treatments are not covered. Without preapproval, many poor patients must forego treatment. In Richardson's case, sacrificing treatment meant sacrificing his chance to live.

As part of the program, HCAP offers lawyer training that explores a wide range of advocacy strategies for people with no health insurance, public health benefits, or private insurance, or who have medical debt, or who are being denied insurance coverage for treatment. By participating in the training, attorneys agree to take two cases through HCAP.

A Personal Fight

Allison Highley, a federal contractor for the Centers for Medicare & Medicaid Services, was among the lawyers who participated in one of the training sessions. For Highley, health care access is a very personal cause. Her father died in August 2011 with no health insurance.

"He worked his whole life, but . . . at some point, his health was so poor, he couldn't work without putting himself in the hospital," she said. "About a year ago, he couldn't do it any more." Her dad lost his insurance because he didn't have a job. He was too young for Medicare. His unemployment benefits prevented him from qualifying for income-based benefits. His prescriptions alone were more than $1,000 a month, and his doctors couldn't see him if he couldn't pay.

"There are safety nets in place only if you're old enough or only if you've spent all of your money and all of your family's money, and you've sold everything," Highley said. "A lot of times, I encounter people with federal jobs or jobs where health insurance is just a benefit they have. They've never known what it's like to have to pay those expenses. It's inconceivable to them that somebody wouldn't have health insurance. I get a lot of, 'Oh, people who don't have health insurance are deadbeats,' and that's not true. Bad things happen to everybody. . . . The safety nets don't always fit."

To help those who fall through the net navigate the complicated health care process, Highley signed up for HCAP training in February 2011. A few weeks later, Richardson's case came across her desk.

One Year to Live

Six months prior to meeting Highley, Richardson was told by his doctor he had 18 months to live. Now, it was under a year. "He was very down. He was depressed. You could feel it. He had almost lost hope," Highley said. They sat down and discussed the situation and what his eligibilities were.

"I knew I had a chance when I met her. She was going to do everything in her power to make it happen," Richardson said.

"I did tell him, 'You know, if there's no coverage, then there's no coverage,'" she recalled. "'If there is something, then we'll find it, and we'll fight to get it for you.'" And there was something. While poring over the pages of the D.C. Medicaid plan, she found a very specific provision. Lung transplants are not covered under D.C. Medicaid unless there is additional coverage by another health care provider.

"If you're dual-eligible [Qualified Medicare Beneficiaries], the Medicaid agency will pay the deductible and coinsurance amounts for all services available under Medicare, with no exceptions or anything," Highley said. Richardson fit the bill.

During a status conference over the phone with counsel from the D.C. Department of Health Care Finance, Highley read the provision she had found. A few hours later, opposing counsel called her back, stating that they had reevaluated the case and she was correct. A few days later, the department issued a letter signed by the director of Health Care Finance saying that D.C. Medicaid would cover its 20 percent of Richardson's procedure.

She immediately called Richardson. "I jumped for joy and cried," Richardson said. "She came through like she said she would. It's a blessing."

Added Highley, "It was just one of those moments. We couldn't believe it. It was really amazing," Highley said. "It was just the best moment, just the best moment."

On September 27, 2011, Richardson was officially placed on the waiting list for a double-lung transplant and is waiting for the call.

"These situations are literally life and death. It's such a small amount of commitment on our part," said Highley, encouraging other lawyers to join the effort. "It was just over 14 hours of actual time working on the case. It was six weeks. In six weeks, we saved his life."

Reach D.C. Bar staff writer Thai Phi Le at tle@dcbar.org.

Want to Get Involved?

For information about upcoming trainings, please visit our Web site at www.dcbar.org/for_lawyers/pro_bono/training. For information about volunteering for the Health Care Access Project, please contact Laura Rinaldi, managing attorney for the D.C. Bar Pro Bono Program, at lrinaldi@dcbar.org.

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LEGENDS IN THE LAW

A Conversation With Judith L. Lichtman

Senior Advisor at the National Partnership for Women & Families

Interview By Kathryn Alfisi

Through her involvement with the National Partnership for Women & Families, **Judith L. Lichtman** has been a leader in the fight against gender discrimination for almost four decades. Lichtman joined the National Partnership (then called the Women's Legal Defense Fund) as executive director in 1974. She stepped down in 2004 and continues to serve as senior advisor.

Before focusing her attention on gender discrimination, Lichtman used her law degree to fight for civil rights at the U.S. Department of Health, Education, and Welfare. She also was the first white instructor at Jackson State College in Mississippi, a historically black school. *Washington Lawyer* recently sat down with Lichtman to discuss her experiences at the front lines of the battle for civil rights and gender equality, including her role in the passage of the Pregnancy Discrimination Act and Family and Medical Leave Act.

Tell me a little about your childhood. Where were you born?

I was born in Brooklyn, New York, and was 20 years old before I left home to transfer from Hofstra College (now Hofstra University) to the University of Wisconsin when I was a junior.

I had a wonderful childhood, growing up in a large extended family, one block from the Atlantic Ocean in a little town in New York City called Far Rockaway. My sister and I were raised by extraordinary parents who made it very clear that we were put on this Earth to make it a better place. My parents and their family were labor union activists, who themselves embodied the search for social and economic justice. I believe their clarity about the abomination of race discrimination and their deep and broad commitment to justice and equality influenced me greatly. Examples of how terrible race and economic inequality were frequently discussed at our dinner table. Importantly, my parents were very clear that women needed to be economically independent, and, indeed, my mom worked outside our home, which I think, for her time, was quite unusual.

When did you decide to pursue a legal career?

While I was an undergraduate at the University of Wisconsin, I had an important mentor, an extraordinary woman who is now the chief judge of the Wisconsin Supreme Court, Chief Judge Shirley Abrahamson. I majored in American history and American political theory, taking an undergraduate course in constitutional law. Shirley Abrahamson taught that course. I had planned to go to graduate school in American political theory, but Judge Abrahamson strongly

Periodically Washington Lawyer features a conversation with a senior member of the District of Columbia Bar reflecting on his or her career as a lawyer. The "Legends in the Law" are selected by the District of Columbia Bar's Publications Committee on the basis of their prominence in their profession and their individual impact on the law and the legal profession in the District of Columbia. For past interviews, visit www.dcbar.org/legends.

Photographs by Patrice Gilbert

suggested that an academic degree just wasn't an activist enough pursuit for me; she urged me to think about a law degree. I like to give the chief judge all the credit, but none of the blame for my career. She was absolutely right that getting a law degree allowed me to use the law to fight race discrimination whenever and wherever it raises its ugly head. Without her good advice and willingness to mentor me, it never would have occurred to me to go to law school.

What was your law school experience like?

There were two women in my University of Wisconsin Law School class of 150 students [Class of 1965], so you get a sense of what an unusual decision it was in 1962 for a woman to decide to go to law school. While it was certainly a time when women in law schools experienced significant hazing, as did I, I also had some wonderful professors and mentors who treated me with the utmost respect. Ultimately, I had a very interesting law school experience.

Did you have a clear idea of what you wanted to do with your law degree?

It was very clear to me that I was getting my law degree so I could become a civil rights activist.

What was your first job out of law school?

In March 1966 I began working as an attorney for the U.S. Department of Health, Education, and Welfare, first working in the office that later became the Office of Civil Rights, and then at the Office of General Counsel. My job was to enforce Title VI of the new 1964 Civil Rights Act, which prohibited school districts receiving federal financial assistance from discriminating against black and Hispanic students. It was an important legal vehicle for achieving school desegregation. My job involved traveling to the southern states, cities, and towns that were still segregated; investigating race discrimination complaints; and bringing legal action when necessary. By and large, school districts remained segregated despite the fact that *Brown v. Board of Education* was decided by the U.S. Supreme Court in 1954. It was a dream job given my interests. I was thrilled that I would have the ability to help enforce laws that prohibited race discrimination.

Were you nervous at all about going into the segregated South as a civil rights activist?

I was nervous. We had to be very careful while traveling in the South. We rarely sent out integrated teams, and never in government-marked cars because we were worried that, that fact alone, might cause violence. We rented cars rather than use government-marked cars; we would eat our meals in black neighborhoods. Large national hotel chains were spreading across the South, and they were integrated and that's where we would stay. Despite the requirements to integrate public accommodations in Title II of the Civil Rights Act of 1964, there remained many places where public accommodations were segregated. We definitely needed to be cautious during the spring and summer of 1966. One could see segregation all around. You still saw water fountains that said 'white only' and 'black only.' You saw restaurants that had separate back entrances for black people. You experienced many restaurants that refused to serve black and white people wishing to eat together.

I met my husband, Elliott Lichtman, and married in late 1967. Elliott, a civil rights lawyer, worked for the Lawyers' Committee for Civil Rights Under Law. I moved to Jackson, Mississippi, where I taught at Jackson State College. I was the first white person hired to teach there. We lived in a predominantly black community. I was very mindful of the dangers for civil rights lawyers. Civil rights workers [Andrew] Goodman, [James] Chaney, and [Michael] Schwerner were killed not that long before we moved to Mississippi, and the Meridian, Mississippi, synagogue had been bombed just a year before we arrived.

Our time in Jackson was always limited. So, eventually we returned to resume our civil rights work back in our home city, Washington, D.C.

How did you go from working on civil rights issues in the South to then working on gender discrimination issues at the National Partnership?

I was convinced to take the job as executive director of the Women's Legal Defense Fund [now the National Partnership for Women & Families] by a dear friend, District Court Judge Gladys Kessler. Judge Kessler was one of its founders. Initially, I was not interested the job because I wanted my work to focus on fighting race discrimination. Gladys Kessler made the intelligent argument that gender and race discrimination were not unrelated and easily convinced me to apply for the job.

I started working for the Women's Legal Defense Fund in July 1974, barely 19 months after *Roe v. Wade* was decided. Title IX, which prohibits sex discrimination in education, became law in 1972, but no regulations had been promulgated. Without regulations, the law is just some piece of paper never having been implemented. One of my first responsibilities was to advocate for strong regulations; they finally took effect in 1975.

Could you describe the national atmosphere at that time regarding the women's movement and gender discrimination issues?

The mid-1970s was a time of great activity to address gender bias in all walks of life—in education, employment, credit, family law, trusts, and estates. The courts, the Congress, and successive administrations were forced to confront and address centuries-old sex discrimination embedded in every facet of our lives, through the lens of constitutional and legal rights of women. The Women's Legal Defense Fund and I, as its executive director, were at the center of all of that change. We have provided leadership for every civil rights administrative, legal, and constitutional battle since our founding in 1971.

What were some other issues you worked on early in your career at the National Partnership?

One of the issues I worked on in those early years was combatting pregnancy discrimination in employment. Title VII, another section of the 1964 Civil Rights Act, prohibits sex discrimination in employment. The courts had uniformly interpreted this statute to include discrimination based on pregnancy, until a case styled *Gilbert v. General Electric* got to the U.S. Supreme Court. The Court decided in favor of the employer. In his decision, Justice William Rehnquist decided that discrimination against pregnant women wasn't sex discrimination because the analysis shouldn't compare women and men, but rather compare pregnant and nonpregnant people.

The company's health and disability plan covered everything—circumcisions, vasectomies, injuries resulting from felonies you committed. There was only one

thing that it didn't cover, and that was health and disability coverage for pregnancy. The National Partnership, Ruth Bader Ginsburg, Marcia Greenberger from the National Women's Law Center, and several other important women's rights leaders led the effort to overturn that decision. It took us two years, but we did so in 1978. The Pregnancy Discrimination Act basically said: We meant what we said and said what we meant . . . that pregnancy discrimination is sex discrimination and is against the law. Obviously, the act established that employers have to treat men and women the same based on their ability to do their job and not their childbearing capacity.

Tell me about the National Partnership's involvement with the Family and Medical Leave Act.

The Family and Medical Leave Act (FMLA) is a crowning achievement for the National Partnership and for me. Unfortunately, it took almost nine years to pass. President George H. W. Bush vetoed it twice and, importantly, President Clinton made it the first bill he signed into law, when he was barely weeks in office. We have the first pen he used to sign the bill and framed it right here in our office. President Clinton often tells people that the act was among the very best things he accomplished in office. Further, that he rarely goes anywhere without somebody thanking him for FMLA. That experience is certainly true for me. Nonprofits are always urged to have an "elevator speech," where in the time it takes to have an elevator ride, one can describe the organization's mission. My elevator speech is that we're the group that wrote FMLA, we led the effort to pass it, and I was its chief lobbyist. Invariably, somebody will come up to me and tell me their wonderful and extraordinary, heartfelt family health needs story and how without FMLA they couldn't have taken the necessary time off. It doesn't get much better than that.

A few years after the Pregnancy Discrimination Act was enacted, we realized that while it provided an extraordinarily important legal protection for women, the law assumes that employers would provide some benefits to somebody. But in a circumstance when an employer chose to provide no health or disability benefits for anybody, there was nothing in the Pregnancy Discrimination Act that would require the employer to do so.

We began to think about a public policy that would basically put our nation's policies where our mouths are. We Americans always like to say that we're a family-friendly nation, but for that to be true, people need to be able to take time off for medical needs without fear of losing their jobs. We were vilified at that time as really being social engineers, but today we estimate that FMLA has been used more than a 100 million times and is wildly popular.

Another issue that you and the National Partnership have worked on is wage discrimination.

When I first came to work at the Women's Legal Defense Fund in the summer of 1974, everybody wore buttons that displayed '59 cents' with a slash through it, symbolizing the fact that women earned only 59 cents for every dollar a man earned, and that the pay gap was unacceptable. Today, almost 40 years later, women earn on average only 77 cents for every dollar a man earns. The disparity is even worse if you look behind that statistic. African American women are earning about 62 cents and Hispanic women about 59 cents for every dollar. We should not have to wait another 40 years for pay equity. So we have very far to go.

The National Partnership is now working on the Paycheck Fairness Act, which is sponsored by Rep. Rosa DeLauro (D–Ct.) and Sen. Barbara Mikulski (D–Md.) and addresses that wage gap, that same pay inequity that I saw in 1974, albeit slightly smaller. I would have thought that the pace of change would have accelerated much, much faster.

Could you mention some other causes the National Partnership has championed?

The National Partnership has played an important role in many issues directly affecting the lives of women and our families. In addition to those already mentioned, our work, for instance, includes addressing the needs for access to quality coordinated health care, reproductive rights, and strong enforcement of equal employment opportunity laws.

How happy are you with the progress that has been made in the area of gender discrimination since you started working at the National Partnership?

There is a glass half-full, half-empty story to tell. I had great hopes when I started working for the Women's Legal Defense Fund in 1974—and many of them have been realized. But I definitely think that the necessary social change should have happened much, much faster. We're still fighting some battles we should have won

long ago. For instance, about 40 percent of workers don't have one day of paid sick leave and most don't have paid family leave. That's an incredibly high number. Therefore, one of the most important priorities for the National Partnership is to enact paid family leave policies for U.S. workers who do not have even one day of paid sick leave. Obtaining paid sick and paid family leave is an important priority for the National Partnership. Sending people to work sick can't be a good idea. Two years ago when the fear of a viral pandemic with H1N1 was quite real, the government told parents to keep their kids home if they were sick. But, keep them home with whom? What kind of crazy advice is that? That's all fine if we have guaranteed paid sick leave, but for the 40 percent of workers who don't, it's very bad and costly advice. We have come very far, but we have very far to go.

How do you feel about the state of gender inequality in the legal profession?

The National Partnership, and I personally have been very active in providing leadership to ensure that women have career opportunities, and that includes becoming judges. The need for diverse judicial nominations with a demonstrated commitment to equal justice is a perfect example of how very far we have to go. I don't have the exact statistics about the percentage of women in the federal judiciary, but it's nowhere near 40 percent or 50 percent. Further, while there are many women associates at law firms, the failure of our corporate and government legal leadership to reflect diversity is an ongoing problem. There are not many women in the legal profession in leadership positions. I think it's a problem that requires a great deal more work. There is a crying need for both men and women in the bar to ensure that the pace of gender equality in the legal profession accelerates.

What are your thoughts on women balancing work and family?

There hasn't been a revolution in caregiving in this country, in the way that there has been a revolution in women's presence in the workplace since the 1960s. For most women working outside the home, that means that they have at least two jobs. Holding down two jobs is, itself, very hard work. I do think that more and more men are beginning to take on family caregiving responsibilities, and I'm hopeful that my children and their children's generation will have a very different reality. But I don't think anybody should be promised a rose garden. Balancing work and family is not easy for women or the men in their lives, and we, as a nation, desperately need to provide the public policies that will support our working families to be productive workers and responsible family members.

What was your own experience in trying to balance work and family?

As I said, being a responsible family member player is hard work. I was and am blessed with an extraordinary involved husband, Elliott, and family support. When there are two partners in a family relationship, both will have to assume family caregiving responsibilities. Addressing the needs of working families should be a priority for this nation so that we can be productive and responsible in every facet of our lives.

Why did you decide to step down as executive director?

I had been the leader [at the National Partnership] for 30 years, and I was approaching a milestone birthday. I thought that it was really important for the organization to continue with its next generation of leadership. I had accomplished a lot and had an awful lot of fun. I stepped aside for a brilliant woman, Debra Ness, to become my successor. I assumed the title of senior advisor and have the best of all possible worlds. I continue to work on issues I feel passionately about, with wonderful people, knowing that the organization is in extraordinarily, capable hands.

Now I have the ability to spend a little more quality time with my grandchildren. It was a total coincidence that I stepped down just as my oldest daughter was having her first child; we now have three grandchildren and one on the way. I also have served on a number of nonprofit boards, which I would not have been able to do. Staying on at the Partnership as a senior advisor, I've been able to retain some of my ongoing responsibilities, including fundraising, which I adore. I've also continued to work on reproductive rights and work–family issues.

While I have changed the nature of my work responsibilities, I plan to work forever. I love what I do and want to continue doing it. While I have many outside interests, I just plainly love my work.

Reach D.C. Bar staff writer Kathryn Alfisi at kalfisi@dcbar.org.

Serving the Community

The D.C. Bar Pro Bono Program

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our partner law firms of the *Community Economic Development Project* for providing pro bono legal services to 62 nonprofit organizations; assisting 215 disadvantaged small businesses; and training 1,230 nonprofit organizations and small business owners in 2011.

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The Community Economic Development Project matches law firms with nonprofit organizations and small businesses to offer on-going counsel, brief advice or educational resources the organizations could not afford otherwise.

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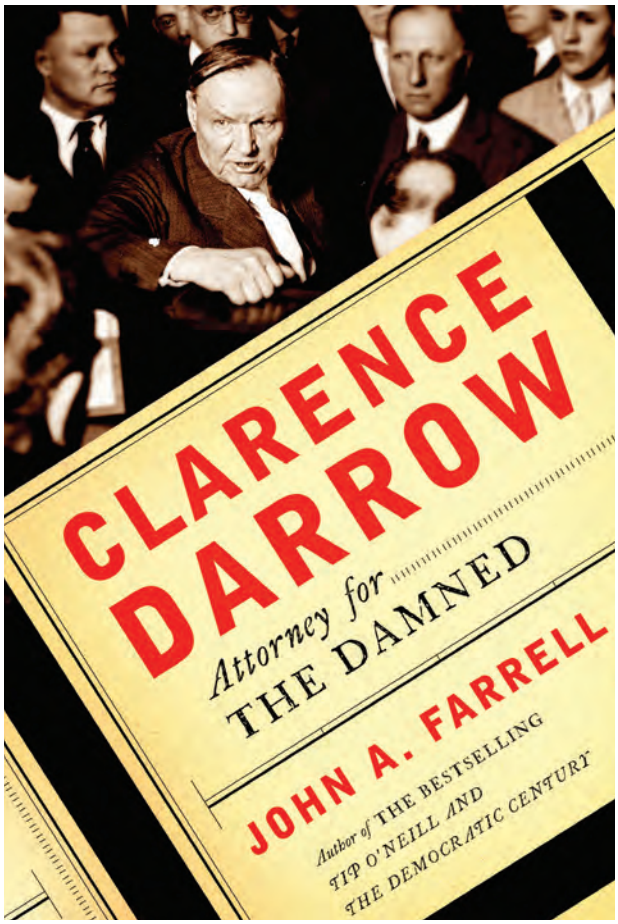


Clarence Darrow: Attorney for the Damned
By John A. Farrell
Doubleday, 2011

Review By Joseph C. Goulden

In 1925 Clarence Darrow was arguably the most famous attorney in the United States, "an American folk hero . . . the legal sorcerer who wins hopeless cases," in the opinion of biographer John A. Farrell. He had been known for years as a gutsy trial lawyer willing to defend labor leaders before hostile juries, especially in Western states. Then came two intensely publicized trials.

First, he beat down prosecution attempts to have Chicago teen thrill killers Nathan Leopold and Richard Loeb put to death, persuading a jury to give them life sentences instead. Then, in a case that commanded international media attention, he won a tacit victory in the so-called Scopes Monkey Trial, where young Tennessee teacher John Scopes was prosecuted by Tennessee primitives for daring to suggest that evolution, not creation, could explain the development of human beings.

The latter victory was at the expense of William Jennings Bryan, a three-time candidate for the U.S. presidency who had served Woodrow Wilson as secretary of state. Brought into the Scopes trial as a special prosecutor, Bryan insisted on testifying as a witness who believed that every word in the Bible was the truth—from Jonah in the Whale to the world being created in six days. Darrow's examination sufficed to expose him as a stammering fool.

As H. L. Mencken wrote, "It was superb to see Darrow throw out his webs, lay his foundations, prepare his baits. His virtuosity never failed. In the end, Bryan staggered to the block and took that last appalling clout. It was delivered calmly, deliberately, beautifully. Bryan was killed as plainly as if he had been felled with an axe." Although convicted, Scopes paid only a token fine.

As a longtime admirer of Darrow—he was boosted by Mencken, my journalistic idol—I found Farrell's account of his life both intriguing and disturbing.

On the positive side, Darrow was an articulate advocate with a commanding courtroom presence who spoke in the florid language

Strikingly, the harshest criticisms of Darrow came from persons who were his one-time friends.
—Washington Lawyer

beloved by jurors of the era. And with generous use of quotations, Farrell wisely permits his subject to speak for himself. Originally a railroad lawyer in Chicago defending wrongful death claims, Darrow switched sides at age 35, and, thereafter, he was a ruthless foe of corporate misdeeds and mistreatment of minorities.

Against overwhelming political odds, with the judiciary and political opinion strongly against him, he won an acquittal of miners' union president William "Big Bill" Hayward, accused of orchestrating the murder of an Idaho governor. The National Association for the Advancement of Colored People, still in its infancy, could count on him for legal help when an African American faced prosecution in a dubious case.

On the negative side, Farrell cites instance after instance of ethical behavior that would have had Darrow before a bar discipline board. By way of defending his conduct, Farrell notes that Darrow practiced law in the early 1900s, an era when giant corporations used their financial power and control of the judiciary and media to crush attempts at unionization. Darrow was not the sort of lawyer to engage in unilateral disarmament in terms of questionable trial tactics. Farrell argues that Darrow was doing his duty toward clients in a ruthless struggle in which both sides employed dirty tricks, questionable witnesses, and outright bribery.

Defending himself in a jury-tampering case that could have put him in jail for three decades, Darrow argued, "Do not the rich and powerful bribe juries, intimidate and coerce judges as well as juries? Do they shrink from any weapon? …Why this theatrical indignation against alleged or actual jury tampering on behalf of 'lawless' strikers or other victims of ruthless capitalism?"

The major shocker in the book is Farrell's revelation that Darrow, indeed, bribed a juror when he was tried for bribing a juror in an earlier case. The charge grew from a case in which he defended brothers John and James McNamara, labor activists who were accused of the 1910 bombing of the *Los Angeles Times*' offices. The intent was to protest against conservative publisher H. G. Otis. The explosion killed 21 low-level employees, none of whom had the slightest influence on the paper's editorial policy. The sight of innocent blood apparently did not trouble Darrow. In his jury-tampering trial, he thundered, "I want to say to the jury, even if it costs me my liberty, that the placing of dynamite in the *Times's* alley was not a 'crime of the century.' It was not even a crime. Under the laws of God, which consider motive everything, they were not guilty of murder."

Farrell struggles diligently to make sense of the charges and counter-charges swirling around the McNamara trial, and his story line is far too complex—and in places, hopelessly confused—to summarize in a few words. Suffice it to say that midcourse in a trial, which was going bad for the defense, Darrow negotiated guilty pleas that saved the brothers from hanging.

No sooner was this deal reached than Darrow was indicted for bribery. His trial also was marked by turmoil over accusations of corruption—the theme being that if Darrow actually paid a juror in the McNamara case, he would not hesitate to do the same when defending himself. Almost incredibly, he was caught (through a dictograph recording) trying to persuade a key prosecution witness not to testify against him. "I will give you anything you ask within reason," Darrow was overheard saying. "I wish you would name the amount. Don't desert me on this thing." There also was testimony about money changing hands on a Los Angeles street corner.

Here is where Farrell's diligent research pays off, for he makes splendid use of materials that were not available to earlier biographers. Especially rich was a huge cache of Darrow's private correspondence, which the University of Minnesota acquired from his heirs in 2004. Included is a letter instructing his son Paul to pay $4,500 ($55,000 today) to a juror, a lumber dealer named Fred E. Golding, who had agreed to vote for acquittal. And, indeed, Darrow went free.

Strikingly, the harshest criticisms of Darrow came from persons who were his one-time friends. Edgar Lee Masters (better remembered as a poet rather than Darrow's former law partner) recalled a case where Darrow was called upon to defend three lawyers accused of bribery in cases against Union Traction Company. He won reversals for two of the accused, then hired a lawyer named Simon, who was the bagman in the case. As Farrell writes, "Some months later, Masters discovered that their firm was receiving $150 a month from Union Traction to buy Simon's continued silence. And whenever Darrow represented a client in an injury case against Union Traction, Masters said, the company would invariably agree to a generous settlement…. 'It was bribery all around,' Masters said."

According to Masters, this was not an isolated example. By his account, Darrow was no stranger to the corruption endemic in Chicago government, and he happily defended the crooked officials and businessmen who benefited from it. Darrow's reasoning? The fee he earned in such cases enabled him to represent the impoverished. Another specialty was big, rich divorce trials that crammed his wallet with money—and provided spicy headlines for Chicago's rollicking press.

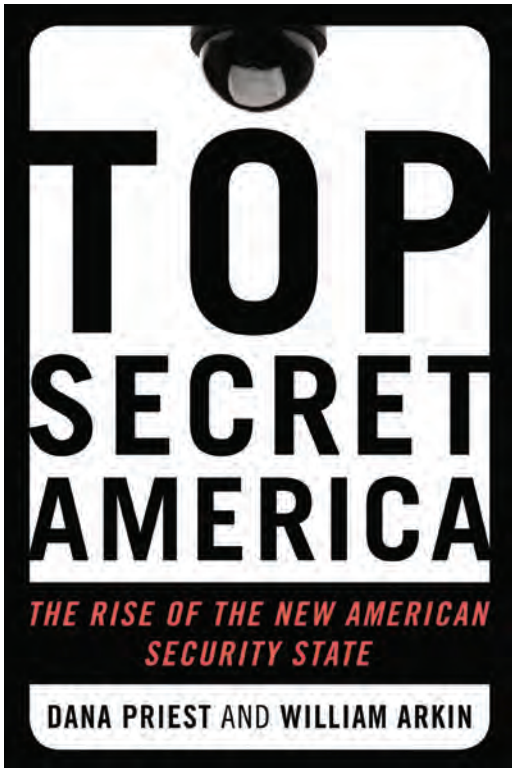
Darrow loved high living. He enjoyed women for their sexuality, not their brains. Affairs came early and often during his marriage (which, unsurprisingly, ended in divorce). When finally single, he avidly supported a "free love" colony where couples would enjoy a blissful free-for-all. The plan came to naught. No matter. Darrow found an abundance of willing bedmates. Farrell accurately describes him as a "notorious rake—a professed sensualist who took much pleasure from the chase, seduction, and act of love." As he told one friend, a woman, "Sex was the only feeling in the world that can make you forget for a little while."

Not all these women went away happy. One lover was quite irritated when her journalist friend, left alone in an apartment with Darrow, found herself caught in a "lecherous embrace." The scene was repeated several days later when Darrow lured the journalist into his private office, locked the door, and once again tried to seduce her. As this woman subsequently said, "His attitude towards women is disgusting in the extreme."

Much of what I *thought* I knew about Darrow came from my childhood reading of Irving Stone's 1940 biography, *Clarence Darrow For the Defense*. The person depicted by Stone, a highly respected writer in the mid-20th century, is a no-warts profile of the lawyer. His many amours and the scent of corruption is nowhere to be found. Farrell reports that Stone worked under the tight control of Darrow's widow, his second wife. I do not think the widow would enjoy Farrell's book.

Joe Goulden is a Washington, D.C., writer. His 18 books include The Superlawyers *(1972) and* The Money Lawyers *(2006).*

Top Secret America: The Rise of the New American Security State
By Dana Priest and William M. Arkin
Little Brown, 2011



REVIEW BY RONALD GOLDFARB

Top Secret America by Washington Post reporters Dana Priest and William M. Arkin will depress and frighten readers. The authors describe, in fastidious detail, how in the post-9/11 era, our provoked government reacted—overreacted, some will conclude—to terrorism on American soil. As they point out, the result has been a secret world of proliferating agencies working, sometimes at cross purposes and mostly with minimal transparency or regulation, to create networks designed to protect us from another predictable attack. The result is a growing number of workers (850,000) with top secret clearance (the very number undermines the notion of top secret), including 250,000 private contractors. There are more than 1,000 government agencies and over 2,000 private companies working on counterterrorism programs, homeland security, and intelligence gathering in 17,000 locations and 33 building complexes in the District of Columbia alone, the authors note.

The authors' report is mind-boggling, and while necessary and impressively thorough, its very comprehensiveness makes for hard reading. They describe an alphabetic society of acronymic names, some sentence-long, that make up this beyond Brave New World. Priest and Arkin discovered "buildings without addresses, offices without floors, acronyms without explanation." The dimension of the operation is breath-taking. But the daunting fear readers may conclude from *Top Secret America* is that this vast intelligence army may not be able to prevent the next attack because of the nature of the attackers. We are so sophisticated that a "lone wolf," amateur crazy person can confound our expansive police force. As Israel's famous security agency learned, all the king's men cannot prevent a crazy suicide bomber from exploding in a public place. Are we safer now from the dangers former U.S. Secretary of Defense Robert Gates addressed before Congress in 2009, "… the toxic mix of rogue nations; terrorist groups; and nuclear, chemical, or biological weapons?"

Indulgent courts that condone extreme rendition, poor congressional oversight, and escalating, proliferating executive agencies of top secret programs, augmented by the use of private contractors, has created what Priest and Arkin call "a bottomless well of official secrets," which is costing the public $10 billion a year—part of an $81 billion annual national intelligence network. At that, the authors conclude, "Too many government agencies kept too many secrets from one another, and the U.S. government kept too many secrets from the American public."

Thus, we have two governments, one in the open, another "parallel secret government whose parts have mushroomed in less than a decade into a gigantic, sprawling universe of its own, visible to only a carefully vetted cadre . . . with a blank check from Congress . . . and surrogates of private contractors."

The proliferation of counterterrorist agencies, playing on patriotism and a natural "culture of vigilance," creates, at the same time, a loss of civil liberties. Priest and Arkin describe examples of this "disturbing trend," comparing it to "the dark days of McCarthyism." The authors have discovered "a web of 3,984 federal, state and local organizations, each with its own counterterrorism responsibilities and jurisdictions," most of it classified and thus not subject to scrutiny.

One database, known as Guardian and controlled by the Federal Bureau of Investigation, includes personal information on American citizens collected for "suspicious activity," which in cases the authors describe would offend most people's notions of fair play, necessity, and proper privacy. Officials admitted to the authors that reporting inevitably is often exaggerated and fallacious, yet it goes into secret government important data mines.

One other-worldly chapter in the authors' catalogue of scary practices deals with our drones program run by the Central Intelligence Agency from an operations center in Nevada. The morality of non-face-to-face killing of terrorists is that it permits us to put fewer troops in harm's way to hunt and destroy terrorists in their faraway haunts. Several agencies are involved, going up the ladder to the president in responsibility for pressing the button. We now have more than 6,000 drones in our $4 billion inventory, paying for over 100 attacks in the last recorded year (2010). Between 2007 and 2011, Priest and Arkin report, 164 drone strikes have killed 964 terrorists.

Working with private defense contractors, surveillance data is gathered globally and coordinated in the United States. Various officials make the ultimate "yes" or "no" decision to "use some of the most sophisticated military technology ever created to kill a man in a mud hut," the authors write. At that, "the inner circles of secrecy [are] no longer just augmenting our war effort, but steering it."

The practices described in deadly detail by Priest and Arkin compose a Brandeis Brief of information, which supports concerns of civil libertarians who have criticized the fallout of post-9/11 antiterrorism practices. Georgetown University law professor David Cole has written extensively describing these concerns, as has George Washington University law

professor Daniel J. Solove, and American Civil Liberties Union president Susan Herman in a new book, *Taking Liberties: The War on Terror and the Erosion of American Democracy,* which questions the worthwhileness of emergency measures impinging on constitutional freedoms. The problem critics have is proving the negative claim that these programs and practices have worked because there have been no repeats of 9/11.

Undercutting the novice's concerns about the excesses of secret America and the natural inclination to be safe rather than sorry (President Obama has kept and expanded President Bush's antiterrorism programs), are the successes of some U.S. efforts. Priest and Arkin praise Gen. Stanley McChrystal's Special Forces' practices, and the "Dark Matter" operations of ultra-secret units. Heroic successes such as the killing of Osama Bin Laden, and other battles with al-Qaeda and Taliban warriors, also are reported.

Americans are proud of these superelite, clandestine soldiers and applaud their operations. Nevertheless, the authors conclude that, successes noted, we are left with a dated, lumbering, often dysfunctional intelligence network that is costing and creating questionable damages to our national psyche. As they conclude their valuable study:

> There are still secrets to be kept, but one of the biggest that didn't need keeping from the American public was the truth about *Top Secret America*.

The authors' motive for writing this book is that the "government has still not engaged the American people in an honest conversation about terrorism or the appropriate U.S. response to it." As a result of dysfunctional government policies, "much harm has been done to the counterterrorism effort itself, and to the American economy" through operating in the dark and "continuing to dole out taxpayer money to programs that have no value" . . . and "are making no significant contribution to the country's safety." The authors' hope is that transparency and debate will diminish the paranoia that has led to a secret government. *Top Secret America* lifts the curtain on these policies; the reaction to what they display is up to us.

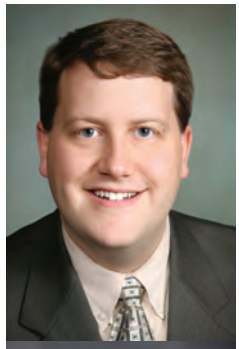
Ronald Goldfarb is a Washington, D.C., attorney, author, and literary agent whose reviews appear regularly in Washington Lawyer. *Reach him by e-mail at rlglawlit@gmail.com.*

attorney briefs

By Thai Phi Le

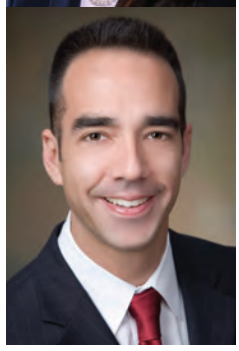
Honors and Appointments

Martin Perlberger has received the Distinguished Service Award for Outstanding Leadership as chair of the Business Law Section of the Beverly Hills Bar Association for 2010–2011… **Jason R. Baron**, director of litigation at the National Archives and Records Administration, has received the 2011 Emmett Leahy Award in recognition of his outstanding contributions to the records and information management profession. Baron is the first federal lawyer to receive the award… During its annual Equal Justice Awards Reception, the Hispanic Bar Association of the District of Columbia honored D.C. Superior Court Judge **Hiram Puig-Lugo** with the 2011 Judge Ricardo M. Urbina Lifetime Achievement Award and **Rosanne Avilés**, supervising attorney at the Legal Aid Society of the District of Columbia, with the 2011 Hugh A. Johnson Jr. Memorial Award… U.S. Department of Justice lawyer **John Giordano** has been appointed as deputy secretary for administration at the Department of Conservation and Natural Resources by Pennsylvania Governor Tom Corbett… **William "Bill" Braun** has been honored by the King County Bar Association in Seattle with its Pro Bono Award for his commitment to providing access to justice to those who cannot afford it… **Robert S. Peck**, president of the Center for Constitutional Litigation, P.C., has been elected vice chair of the Board of Overseers for the RAND Institute for Civil Justice in Santa Monica, California; was elected as delegate to the American Bar Association House of Delegates for the Tort Trial and Insurance Practice Section; and appointed cochair of the Lawyers Committee for the National Center for State Courts in Williamsburg, Virginia… **Joseph M. Hanna**, a partner at Goldberg Segalla LLP, has received the 2011 Community Service Award from the Defense Research Institute for his commitment to the public through his work as founder and president of Bunkers in Baghdad… The **Honorable Joan V. Churchill**, a retired immigration judge for the U.S. Immigration Court for Arlington, Virginia, has been elected president-elect of the National Association of Women Judges… **Shulman, Rogers, Gandal, Pordy & Ecker, P.A.** has been honored by the Montgomery County (Maryland) Board of Education with its 2011 Distinguished Service to Public Education Award… **Benjamin F. Wilson**, a managing principal at Beveridge & Diamond, P.C., has been honored by Mentoring to Manhood as one of the organization's "Men Who Make the Difference"… **John J. Connolly**, a partner at Zuckerman Spaeder LLP, has received the Maryland Bar Foundation's Legal Excellence Award for the Advancement of Unpopular Causes. **Amit P. Mehta**, also a partner at Zuckerman Spaeder LLP, has been named to the National Law Journal's 2011 list of "Minority 40 Under 40" lawyers… **Alexander Chinoy**, of counsel at Covington & Burling LLP, has been elected president of the International Trade Commission Trial Lawyers Association for the 2012 term… **Geneva Vanderhorst** has been elected for a second three-year term as member of the board of directors of the National Association of Criminal Defense Lawyers… A number of attorneys from Paley Rothman have recently received appointments: **Bibi M. Berry** has been elected to the Maryland State Bar Association's Family and Juvenile Law Section Council. **Deborah A. Cohn** has been chosen as chair-elect of the Maryland State Bar Association's Estate & Trust Section Council. **James R. Hammerschmidt** has been recognized for his distinguished service to and leadership of the Federal Bar Association's Labor & Employment Law Section during the organization's annual meeting in Chicago. **Jeffrey A. Kolender** has been named to a three-year term as member of the Montgomery College Foundation's Planned Giving Committee. **Howard B. Soypher** was elected as fellow of the American Academy of Matrimonial Lawyers. **Patricia M. Weaver** has been named one of the recipients of *The Daily Record*'s 2011 Leadership in Law Award for outstanding work in bettering the community and the legal profession in Maryland… **Jesselyn Radack**, national security and human rights director at the Government Accountability Project, has received the Sam Adams Award, presented annually by the Sam Adams Associates for Integrity in Intelligence to an intelligence professional who has taken a stand for integrity and ethics… **Dineen Pashoukos Wasylik** has been appointed to a two-year term as chair of the Hillsborough County (Florida) Bar Association Intellectual Property Section… **Keith Harper**, a partner at Kilpatrick Townsend & Stockton LLP, has been appointed by President Barack Obama to the President's Commission on White House Fellowships.



David L. Cox has been elected partner at Kilpatrick Townsend & Stockton LLP on the firm's insurance recovery team.

Alice J. P. Rhee has joined Pepper Hamilton LLP as associate in the firm's commercial litigation practice group in Detroit.



Jarrett Wolf has become licensed as a private investigator in New York.

On the Move

Dietrich M. von Biedenfeld has joined San Jacinto College District in Pasadena, Texas, as contract administrator… Privacy and telecommunication attorneys **Wendy M. Creeden** and **L. Elise Diet-**

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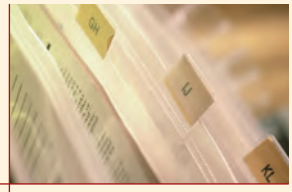

Note: Unless otherwise indicated, all D.C. Bar events are held in the D.C. Bar Conference Center at 1101 K Street NW, first floor. For more information, visit www.dcbar.org or call the Sections Office at 202-626-3463 or the CLE Office at 202-626-3488. CLE courses are sponsored by the D.C. Bar Continuing Legal Education Program. All events are subject to change.

FEBRUARY 1

A Judicial Perspective: Views From the Bench With the Honorable Rhonda Reid Winston and the Honorable John Campbell
12–2 p.m. Sponsored by the Estates, Trusts and Probate Law Section.

International Tax, Part 3
12–2 p.m. Sponsored by the International Tax Committee of the Taxation Section.

FEBRUARY 2

Employment Law Update: The Fourth Circuit and the Appellate Courts in Maryland
12–2 p.m. Sponsored by the Labor and Employment Law Section.

New Tax Practitioners, Part 4
12–2 p.m. Sponsored by the New Tax Practitioners Committee of the Taxation Section.

Section 337 IP Investigations at the ITC: Lessons for District Court Practitioners
4–6 p.m. Sponsored by the Intellectual Property Law Section. The location for this event was unknown as of press time. For further details, visit the Bar's Web site at www.dcbar.org.

Essential Trial Skills, Part 1: Jury Selection
6–9:15 p.m. CLE course cosponsored by the Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Family Law Section; Government Contracts and Litigation Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; Real Estate, Housing and Land Use Section; and Tort Law Section.

FEBRUARY 6

Choosing and Forming a Business Entity in the D.C. Metro Area 2012
6–9:15 p.m. CLE course cosponsored by the Arts, Entertainment, Media and Sports Law Section; Corporation, Finance and Securities Law Section; District of Columbia Affairs Section; Family Law Section; Law Practice Management Section; and Real Estate, Housing and Land Use Section.

FEBRUARY 7

U.S. Free Trade Agreements With Colombia and Panama: The Views of the Governments
12:30–2:30 p.m. Sponsored by the Inter-American Legal Affairs Committee of the International Law Section. Arnold & Porter LLP, 555 12th Street NW.

Introduction to Health Law 2012, Part 5: Health Care Transactions and Managed Care Contracting
6–9:15 p.m. CLE course cosponsored by the Courts, Lawyers and the Administration of Justice Section; Health Law Section; and Labor and Employment Law Section.

FEBRUARY 8

How to Litigate Your Case When Your Client Is Locked Up Outside the Jurisdiction
12–2 p.m. Sponsored by the Courts, Lawyers and the Administration of Justice Section.

State and Local Taxes, Part 3
12–2 p.m. Sponsored by the State and Local Taxes Committee of the Taxation Section.

Export Controls and Economic Sanctions 2012: Recent Developments and Current Issues
6–8:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; and International Law Section.

FEBRUARY 9

International Law Pro Bono Fair
12–2 p.m. Sponsored by the International Law Section. Arnold & Porter LLP, 555 12th Street NW.

SEC Staff, Alliance Advisors, and Private Practitioners Discuss Recent Developments in Election Contests
12:15–1:30 p.m. Sponsored by the Mergers and Acquisitions Committee of the Corporation, Finance and Securities Law Section.

Essential Trial Skills, Part 2: Opening Statements and Closing Arguments
6–9:15 p.m. See listing for February 2.

FEBRUARY 13

Conflicts of Interest: Advanced Topics and Considerations
6–8:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Corporation, Finance, and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Environment, Energy and Natural Resources Section; Family Law Section; Government Contracts and Litigation Section; Health Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; and Real Estate, Housing and Land Use Section.

A Plain English Guide to the Revised FTC/DOJ Horizontal Merger Guidelines
6–9:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Antitrust and Consumer Law Section; Arts, Entertainment, Media and Sports Law Section; Corporation, Finance and Securities Law Section; Environment, Energy and Natural Resources Section; Government Contracts and Litigation Section; and Litigation Section.

FEBRUARY 14

Tax Audits and Litigation Tax, Part 5
12–2 p.m. Sponsored by the Tax Audits and Litigation Committee of the Taxation Section.

Attorney Briefs

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erich have joined Kutak Rock LLP… **Fatima S. Sulaiman** has joined K&L Gates LLP as partner in the firm's investment management, hedge funds, and alternative investments practice… **Marybeth Peters** has joined Oblon, Spivak, McClelland, Maier & Neustadt, L.L.P. as senior counsel in the firm's trademark and copyright practice group… **Vasu Muthyala** has joined O'Melveny & Myers LLP as counsel in the firm's white collar defense and corporate investigations practice… **David H. Resnicoff** has joined Miller & Chevalier Chartered as member in the firm's international, white collar, and internal investigations practices… **Adrien C. Pickard** has joined Blank Rome LLP as associate in the firm's commercial litigation group… **Daniel J. Smith** has joined TidalTV, Inc. as chief counsel, becoming the company's first in-house attorney… **Jason A. Levine** has joined Vinson & Elkins LLP as partner in the firm's complex commercial litigation practice… **Shannon Donnelly** has joined Baker & McKenzie as of counsel in the firm's global immigration and mobility practice… **Sean Patrick Roche** has been elevated to partner as a civil litigation attorney with Cameron/McEvoy, PLLC… **Ashley R. Dobbs** has joined Bean, Kinney & Korman, P.C. as associate… **Michael Diamant**, **Jason J. Mendro**, **Cynthia E. Richman**, and **Amir C. Tayrani** have been promoted to partner at Gibson, Dunn & Crutcher LLP… **Venable LLP** has added four attorneys to its energy practice group: **David DeSalle**, **Daniel Malabonga,** and **Brian Zimmet** have joined as partner, and **Michael Splete** has joined as associate. **Janet Fisher** has joined the firm as partner in the firm's commercial litigation group. **Ralph S. Tyler** has joined as partner in the regulatory and litigation groups, practicing at the firm's Baltimore and Washington, D.C., offices. . . **Karen A. McGee** has been named managing partner of Barnes & Thornburg LLP… **Jeffrey M. Sherman** has joined Lerch, Early & Brewer, Chartered, as principal in the firm's creditor's rights and bankruptcy practice group. **John E. Tsikerdanos** has joined as associate in the same practice group… **Michael R. Hill** has joined EDF Inc. as associate general counsel… **Stanley J. Samorajczyk** has joined McNamee Hosea as senior counsel in the firm's Annapolis office, specializing in financial restructuring and corporate reorganization work… **Michael Dimino** has joined Kilpatrick Townsend & Stockton LLP as counsel on the firm's electronics and software team… **James R. Bieke** has joined Sidley Austin LLP as partner, focusing on environmental and natural resources law and policy.

Company Changes

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC has merged with the Houston law firm of Spain Chambers and Orlando law firm of Litchford & Christopher Professional Association. The firm will maintain the name of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC. … **Perkins Coie LLP** has opened an office in Taipei, Taiwan, focusing on patent litigation and other intellectual property matters.

Author! Author!

Thomas M. Susman has written "Reciprocity, Denial, and the Appearance of Impropriety: Why Self-Recusal Cannot Remedy the Influence of Campaign Contributions on Judges' Decisions," published in volume 26 of the *Journal of Law & Politics* in August 2011… **David Ralston Jr.**, a partner at Foley & Lardner LLP, has written "Key Steps and Strategies in the Bid Protest Process," which appears in Aspatore's 2011 edition of *Inside the Minds: Litigation Strategies for Government Contracts*… **Pieter M. O'Leary**, a San Diego attorney, has written "Bullies in the Sandbox: Federal Construction Projects, the Miller Act, and a Material Supplier's Right to Recover Attorney's Fees and Other 'Sums Justly Due' Under a General Contractor's Payment Bond," published in volume 38 of the University of Denver Sturm College of Law's *Transportation Law Journal*… **Michael Ariens**, a professor of law at St. Mary's University in San Antonio, has written "Lone Star Law: A Legal History of Texas," the first overarching study of Texas legal history… **Andrew J. Sherman**, a partner at Jones Day, has published his 21st book, *Harvesting Intangible Assets: Uncover Hidden Revenue in Your Company's Intellectual Property*, a strategic guide to the management and leveraging of intellectual capital.

D.C. Bar members in good standing are welcome to submit announcements for this column. When making a submission, please include name, position, organization, and address. E-mail submissions to D.C. Bar staff writer Thai Phi Le at tle@dcbar.org.

Bar Counsel

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IN RE DANA A. PAUL. Bar No. 490142. On October 31, 2011, the Maryland Court of Appeals reprimanded Paul.

Informal Admonitions Issued by the Office of Bar Counsel

IN RE CHRISTIAN J. CAMENISCH. Bar No. 151324. November 1, 2011. Bar Counsel issued Camenisch an informal admonition. While retained to represent a client in a property matter, Camenisch failed to provide competent representation, failed to serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters, failed to represent the client zealously and diligently within the bounds of the law, failed to act with reasonable promptness in representing the client, failed to communicate the basis or rate of the legal fee in writing, failed to withdraw from the representation of the client when the representation will result in a violation of the Rules of Professional Conduct, and engaged in conduct that seriously interfered with the administration of justice. Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.5(b), 1.16(a)(1), and 8.4(d).

IN RE MARTIN F. MCMAHON. Bar No. 196642. October 20, 2011. Bar Counsel issued McMahon an informal admonition. While retained to represent a client in a civil matter, McMahon failed to provide competent representation, failed to serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters, failed to represent a client zealously and diligently within the bounds of the law, and failed to act with reasonable promptness in representing a client. Rules 1.1(a), 1.1(b), 1.3(a), and 1.3(c).

The Office of Bar Counsel compiled the foregoing summaries of disciplinary actions. Informal Admonitions issued by Bar Counsel and Reports and Recommendations issued by the Board on Professional Responsibility are posted on the D.C. Bar Web site at www.dcbar.org/discipline. Most board recommendations as to discipline are not final until considered by the court. Court opinions are printed in the Atlantic Reporter *and also are available online for decisions issued since August 1998. To obtain a copy of a recent slip opinion, visit www.dcappeals.gov/dccourts/appeals/opinions_mojs.jsp.*

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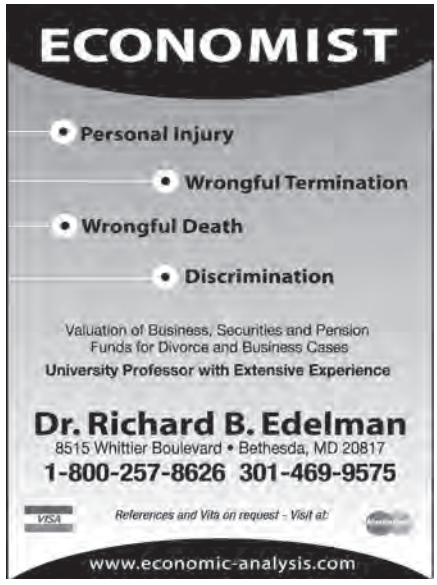

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legal spectator

By Jacob A. Stein

Law Talk

The TV actor who plays the part of a lawyer uses lawyer talk. He says things like "a grand jury would indict a ham sandwich," "white-shoe law firms," and "rainmakers." He tells the young associate that he should be "thinking like a lawyer."

We now have a book written by a group of distinguished professorial lawyers who tell us the history and meaning of lawyer talk.[1] The book is called *Lawtalk: The Unknown Stories Behind Familiar Legal Expressions*.[2]

Let's start with that ham sandwich. I heard it first while sitting in a New York court. The judge said something about a grand jury indicting a ham sandwich. I couldn't put it all together at that time. *Lawtalk* gives the history.

A New York state court judge, Sol Wachtler, resented the hypocrisy of prosecutors who say that it is the members of the grand jury who draft indictments. We all know that the prosecutor drafts indictments. Judge Wachtler believed that the grand jury process was a waste of time.

One day, when a prosecutor talked about grand juries and indictments, the judge said, publicly, that a prosecutor, if he wanted to, could get the grand jury to indict a ham sandwich. Judge Wachtler repeated it in and out of court. He said he regretted using the ham sandwich as his foil. He wished the sandwich had been corned beef rather than ham.

I next take up the phrase "white-shoe law firm." We have all heard about white-shoe law firms, firms such as Davis, Polk & Wardwell LLP. In 1961, Davis, Polk had 38 partners, 26 of whom were listed in the New York *Social Register*. These white-shoe lawyers mingled with the wealthy. They graduated with degrees from the best eastern colleges and law schools. They wore the white bucks for summer casual wear in their exclusive sailing excursions on the Cape.

In the past, white-shoe law firms excluded candidates on the basis of race, sex, religion, or anything else. Those days are over. The law practice is too competitive. Whether your shoes are white, brown, or black (or maybe no shoes at all), it is the book of business that kicks open the door, even at Davis, Polk.

There was another type of lawyer who did not wear white shoes. Clarence Darrow was one. He wore a white suit while performing in the 1925 famous Tennessee Scopes trial. Darrow, with his dishevelled hair, his rumpled white suit, and his snappy suspenders, was the perfect picture of the defender of the poor, the needy, and the helpless.

If you want the 1925 Darrow look, you sleep in your 100 percent linen white suit. Wear half-soled shoes and snapper black suspenders. The choice of hose is optional. I have seen photographs of Darrow wearing both black and white hose (at different times; no garters) with his white suit.

Lawyers from the Bayou Country report that once they put on a white suit like Gregory Peck in *To Kill a Mockingbird*, their personality changes—and for the better.

Lawyers from the Bayou Country report that once they put on a white suit like Gregory Peck in *To Kill a Mockingbird,* their personality changes—and for the better. The vocabulary is wistful poetry South. The classics are quoted. Didn't Cicero and Quintilian wear white in the Roman courts?

If you stand in front of one of the southern courthouses in your white suit, don't get too close to a mud puddle. The cab you just hailed will pull up quickly and convert your act into a Buster Keaton comedy.

Lawtalk contains an entry about the word "rainmaker." In 1960 it was a word connected with pilots who attempted to induce rain by cloud seedings. In the 1970s the *Wall Street Journal* picked up the word and used it to designate lobbyists and influence peddlers. In the late 1970s lawyers adopted the term.

In 1980 Robert Nelson, a sociologist, conducted studies about large Chicago law firms. He reports that the word rainmaker describes a lawyer who gets new clients.

Lawtalk also offers an entry on the phrase "thinking lawyer." We are told that a thinking lawyer must be precise, cautious, resourceful, and logical. She must make pertinent, startling distinctions between this and that.

Furthermore, the thinking lawyer is detached. She listens to a narration of tragic events involving the death of two gifted young people killed in a horrible automobile accident and considers it without sympathy, compassion, or despair. No, her thoughts are when and where the deaths occurred and the applicable wrongful death statute. Were the deaths instantaneous, or was there time between injury and death? Was there conscious pain and suffering? Who had the light and was the braking distance within the speed limit? Where is the best place to file suit? Is there diversity jurisdiction? This is the legal mind at work.

Lawtalk does not include the words "home cooking." A lawyer in a so-called foreign court may be told that he may get some home cooking. This means that the so-called foreigner may not like the local menu. I am told that the phrase home cooking was first used in a few small-town courts in West Virginia.

So when you are in "foreign territory" and you hear that you are to receive some home cooking, get yourself local counsel right away.

Reach Jacob A. Stein at jstein@steinmitchell.com.

Notes

1 The contributors are James Clapp, a legal lexicographer and author of *Random House Webster's Dictionary of the Law*; Elizabeth Thornburg, a civil procedure professor at Southern Methodist University Dedman School of Law; Marc Galanter, a professor emeritus at the University of Wisconsin-Madison who wrote *Lowering the Bar: Lawyer Jokes and Legal Culture*; and Fred Shapiro of Yale Law School who edited *The Yale Book of Quotations*.

2 Yale University Press, November 2011.

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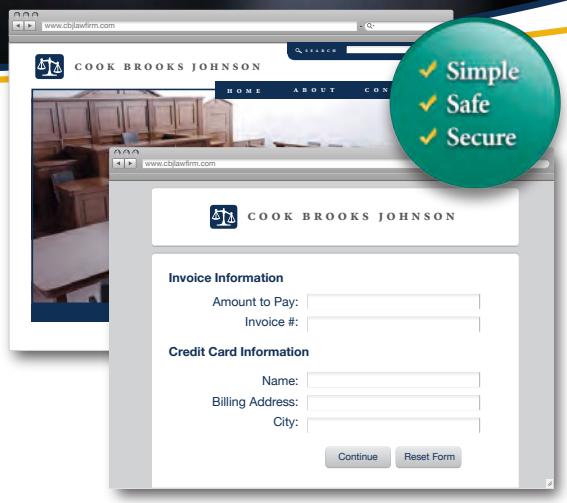

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